1160.

SUPREME COURT OF THE UNITED STATES.

No. 134.

THOMAS RICHARDSON, PL'FF IN ER.,

vs.

THE CITY OF BOSTON.

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THOMAS RICHARDSON *vs.* THE CITY OF BOSTON.

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At a Circuit Court of the United States holden at Newport, within and for the Rhode Island District, on the fifteenth day of June, A. D. 1855: Present Hon. Benjamin R. Curtis, Asso. Just. Sup. Court U. S.; Hon. John Pitman, U. S. Dist. Jud'e for R. I. District; Geo. W. Brown, Esq., U. S. Att'y for R. I. District; Francis C. Gardiner, U. S. Marshal; Henry Pitman, Clerk of Circuit Court:

In the record of the proceedings of said Court, among others are the following, to wit:—

THOMAS RICHARDSON }
vs. }
CITY OF BOSTON. }

Be it remembered that at the November term, A. D. 1852, of said Court, was filed the following transcript from the Circuit Court of the U. S. for the Massachusetts District:

UNITED STATES OF AMERICA,
Massachusetts District, ss.

October Term, 1852.

At a Circuit Court of the United States for the first Circuit, and District of Massachusetts, begun and holden at Boston on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty two: Before the Honorable Benjamin R. Curtis, Associate Justice, Hon. Peleg Sprague, District Judge:

THOMAS RICHARDSON, of Providence, in the State of Rhode Island, a citizen of said State of Rhode Island, Plaintiff,

vs.

THE CITY OF BOSTON, a Corporation established by law in the State of Massachusetts, all the members of which are citizens of said State, in our District of Massachusetts, Defendants:

In a plea of trespass on the case, for that whereas, the said pl'ff, before and at the time of the committing of the grievance by the said City of Boston, as hereinafter next mentioned, was, and from thence hitherto hath been, and still is, lawfully seized and possessed of a certain wharf, with the appurtenances thereto belonging, situated in Sea street in said Boston, known as Price's Wharf, and bounded as follows, to wit: Northerly on the south side of Summer street and the dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and by the south side of Summer street, to the channel; then bounded on the north by Sea street from the aforesaid corner to the land of David W. Bradlee and Ann, his wife; then bounded south-

wharf of the said pl'ff belonging and appertaining: Yet the said City of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said pl'ff in that behalf, and to deprive him of the use and benefit of said way and dock whilst he, the said pl'ff, was so possessed of his said wharf, with the appurtenances, as aforesaid, to wit, on the thirteenth day of September, in the year of our Lord eighteen hundred and fifty, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected by said City of Boston, in and across the said way or dock, for a long space of time, to wit, hitherto, and thereby during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up, and the said pl'ff, by means thereof, could not, during the time aforesaid, or any part thereof, nor can he now have or enjoy his said way or dock, as he of right ought to have done, and otherwise might and would have done, and has been, and is, by means of the premises deprived of the use and benefit and advantage thereof, and by means thereof the access of boats and vessels to said wharf and the egress therefrom to the sea has been interrupted and destroyed, and great quantities of earth, mud, and other materials have been floated to and deposited upon and near the said wharf, and thereby the use and enjoyment thereof, and the value of the pl'ff's estate therein had been greatly injured.

Also for that the pl'ff, before and at the time of the committing of the grievance by the said City of Boston, as hereinafter next mentioned, was and from thence hitherto hath been, and still is, lawfully seized and possessed of a certain other wharf, with the appurtenances thereto belonging, situated in "Broad Street," so called, in said Boston, known as the "Bull Wharf," and bounded thus: westerly or northwesterly on Broad Street, there measuring sixty-two feet and three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly, on low water mark, there measuring fifty-two feet, or thereabouts; southerly or southwesterly on the town way or dock, there measuring six hundred and sixty feet, more or less. And the pl'ff avers that said dock forming the southerly boundary of the estate so by him possessed as aforesaid, was at the time of the grievance hereinafter alleged, and for a long time prior thereto, had been a public dock, slip or way, and by reason thereof he, the said pl'ff, during all the time aforesaid, had ought to have, and still ought to have egress with boats and vessels of every description upon, over, and through said dock, from the wharf so by him possessed as aforesaid, to the channel of the sea, and from said channel of the sea to his said wharf: Yet the said City of Boston, well knowing the premises, but wrongfully and unjustly contriving and

intending to injure the said pl'ff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he, the said pl'ff, was so possessed of his said wharf, with the appurtenances, as aforesaid, to wit, on the thirteenth day of September, in the year of our Lord eighteen hundred and fifty, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected by said City of Boston, in and across the said way or dock, for a long space of time, to wit, hitherto, and thereby during all the time aforesaid, the said way or dock, and were, and still are greatly obstructed and stopped up; and the said pl'ff, by means thereof, could not, during the time aforesaid, or any part thereof, nor can he now have or enjoy said way or dock, as he of right ought to have done, and otherwise might and would have done, and has been and is by means of the premises deprived of the use, benefit, and advantage thereof; and by means thereof the access of boats and vessels to said wharf, and the egress therefrom to the sea has been interrupted and destroyed, and great quantities of earth, mud, and other materials have been floated to, deposited upon and near the said wharf, and thereby the use and enjoyment thereof, and the value of the pl'ff's estate therein have been greatly injured.

Also for that before and at the time of the committing of the grievance by the said City of Boston, as herein next mentioned, a certain wharf, with the appurtenances thereto belonging, situated in Sea street in said Boston, known as Price's wharf, and bounded northerly on the south side of Summer street and the dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and the south side of Summer street, to the channel, was in the possession and occupation of one Calvin Bullard as tenant thereof to the pl'ff, the reversion thereof then and still belonging to the pl'ff; and then and there a certain other wharf situated in Broad street, so called, in Boston, known as the Bull wharf, and bounded southerly on the dock aforesaid to low water mark, was then and there in the possession and occupation of Lecraw and Perkins, as tenants thereof to the pl'ff, the reversion thereof then and still belonging to the pl'ff, and by reason thereof the pl'ff ought at all times forever after the determination of said tenancies, and the said tenants during the said tenancy to have a certain way from each of said wharves unto the channel, or low water mark, for himself, his servants, and vessels, to go, return, pass and repass every year, and at all times of the year, of their free will and pleasure as to said wharf belonging and appertaining: Yet the said City of Boston, well knowing the premises, but contriving and intending wrongfully and unjustly to injure the pl'ff in his reversionary estate and interest of and in said respective wharves, with the appurtenances, while said wharves were so in the possession

and occupation of said tenants, and while the pl'ff was so interested therein as aforesaid, to wit, on the thirteenth day of September in the year of our Lord eighteen hundred and fifty, wrongfully and injuriously kept and continued, and caused to be kept and continued, divers large quantities of wood and timber, stone and earth, in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected by said City of Boston in and across the said way or dock for a long space of time, to wit, hitherto, by means of which said several premises the pl'ff hath been and is greatly injured and prejudiced in his said reversionary estate and interested of and in the said wharves respectively, with their appurtenances so in possession of the said Lecraw & Perkins and Bullard respectively, as tenants thereof to the pl'ff, and by means thereof the access of boats and vessels to said wharves, and the egress therefrom to the sea, has been interrupted and destroyed, and great quantities of earth, mud, and other materials, have been floated to and deposited upon and near the said wharves, and thereby the use and enjoyment thereof, and the value of the pl'ff's reversionary estate therein have been greatly injured.

Also for that before and at the time of the committing of the grievances by the said City of Boston, as hereinafter mentioned, a certain wharf with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Price's wharf, and bounded northerly on the south side of Summer street and the public or town dock at the end thereof, extending from the corner of Summer street and Sea street, formed by the east side of Sea street and the south side of Summer street, to the channel, was in the possession and occupation of one Calvin Bullard, as tenants thereof to the pl'ff, the reversion thereof then and still belonging to the pl'ff; and then and there a certain other wharf situated in Broad street, so called in said Boston, known as the Bull wharf, and bounded southerly on the public or town dock as aforesaid to low water mark, was then and there in the possession and occupation of Lecraw & Perkins as tenants thereof to the plaintiffs, the reversion thereof then and still belonging to the pl'ff; and the pl'ff avers that the dock aforesaid, upon which said respective wharves bound as aforesaid, was at the time of the committing of the grievances, hereinafter alleged, and for a long time prior thereto had been a public way, slip, or dock, and by reason thereof the pl'ff ought at all times forever after the termination of the tenancies aforesaid, to have free egress and passage with boats and vessels of every description, upon, over, and through said dock or way, from the said respective wharves aforesaid to the channel of the sea, and from the channel of the sea to said wharves: Yet the said City of Boston, well knowing the premises, but contriving and intending to injure the pl'ff in his said reversionary interest and estate of and in said respective wharves and their appurtenances, while said wharves so in the possession and occupation of said tenants, and while the pl'ff was so interested therein as aforesaid, to wit, on the thirteenth day

of September, in the year of our Lord eighteen hundred and fifty, wrongfully and injuriously kept, and continued and caused to be kept and continued, divers large quantities of wood and timber, stone and dirt, in and across the said way or dock, before then wrongfully placed and erected, and caused to be placed and erected by said City of Boston, in and across the said way or dock for a long space of time, to wit, hitherto, by means of which said several premises the pl'ff hath been and is greatly injured and prejudiced in his said reversionary interest and estate, of and in said wharves respectively, with their appurtenances as in the possession of said Lecraw, and Perkins, and Bullard, respectively, as tenants thereof of the pl'ff, and by means thereof the access of boats and vessels to said wharves, and the egress therefrom to the sea, has been interrupted and destroyed, and great quantities of earth, mud, and other materials have been floated to and deposited upon and near the said wharves, and thereby the use and enjoyment thereof, and the value of the pl'ff's reversionary estate therein have been greatly injured, to the damage of the said Richardson, as he says, the sum of nineteen hundred and ninety-nine dollars; whereupon the Marshal made his return, which is in the words following, viz:—

UNITED STATES OF AMERICA,
Mass. Dist., ss.

BOSTON, April 15th, 1852.

Pursuant hereunto, I have summoned the City of Boston, the defendant within named, by leaving at the last and usual place of abode of Benjamin Seaver, the Mayor of said City, and also by leaving at the last and usual place of abode of Samuel F. McCleany, Junior, the Clerk of said City, respectively, a true and attested copy of the within writ, for the appearance of said City in Court in this action.

2 services and travel, 4 05
2 copies, 6 00
——$10 05

CHAS. DEVEUS, Jr.,
U. S. Marshal Mass. District.

This action was entered at the May Term of this Court, A. D. 1852, when and where the parties appeared, by their respective attornies, and afterwards, at that term the pl'ff had leave to amend as follows, viz:—

THOMAS RICHARDSON
vs.
"CITY OF BOSTON."

And now, by leave of the Court, here, the pl'ff amends his declaration by adding at the end of each count thereof the words—"and pl'ff has been obliged to reduce, and has reduced, and been

unable to get and obtain the rents which he has formerly been accustomed to obtain, or those he was entitled to receive from said wharves."

By S. BARTLETT,
his Attorney.

And thence this action was continued unto this present term, and now the pl'ff, by his attorney, files the following motion, to wit:—

CIRCUIT COURT UNITED STATES,
Massachusetts District:

THOMAS RICHARDSON
vs.
THE CITY OF BOSTON. } No. 92. October Term, 1852.

And now the plaintiff shows the Court here, that the Honorable the Judge of the Supreme Court to whom this Circuit has been assigned, is incompetent to try the same by reason of his having been of counsel for one of the parties; that the Honorable the District Judge is legally incompetent, by reason of his being concerned in interest in said cause to try the same, wherefore he moves the Court here that the foregoing facts be entered of record; and the pl'ff moves the Court here that an order be passed that an authenticated copy of said entry, with all the proceedings in said suit or action, be forthwith certified to the most convenient Circuit Court in the next adjacent State.

By S. BARTLETT,
his Attorney.

Whereupon it is ordered by the Court that the Clerk do enter on the record of this case the fact that the Hon'ble Benjamin R. Curtis, one of the Associate Justices of the Supreme Court of the United States, who is assigned to this Circuit, has been of counsel with the said pl'ff while practicing at the bar, and therefore declines to sit in this case; and also the further fact that the Hon'able Peleg Sprague, District Judge of the United States for this District, is an inhabitant of the City of Boston, and so interested in the result of this suit, and therefore declines to sit in this case.

And afterwards, to wit, on the 15th day of October, A. D. 1852, it is further ordered, that an authenticated copy of the record, and all the proceedings in this suit be forthwith certified to the Circuit Court next to be holden at Providence, within and for the District of Rhode Island, on the fifteenth day of November next, the same being the most convenient Circuit Court in the next adjacent State.

UNITED STATES OF AMERICA,
Massachusetts District, ss.

I, Isaac O. Barnes, Clerk of the Circuit Court of the United States for the First Circuit, Massachusetts District, do hereby certify, that

the foregoing is a true copy of the record of the case of Thomas Richardson *versus* The City of Boston.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Boston, this fifteenth day of November, A. D. 1852, and in the seventy-seventh year of the Independence of the United States of America.

[L. S.] ISAAC O. BARNES,
Clerk.

And the case being continued to the June Term following, is committed to the following jury:—

William Pinnegar, *Foreman*,	Stillman Welch,
Seth C. Bradford,	James Burlingame,
John T. Tilley,	Jeremiah B. Hazzard,
John Hambly,	James Lewis,
James O. Sweet,	Jesse B. Crandall,
George O. Browning,	George W. Barney,

Who come into Court and render a verdict, which is duly affirmed in the words following, to wit: "The jury find the def'ts guilty in manner and form as in the sixth count of the pl'ff's declaration alleged, and assess the pl'ff's damages at the sum of one thousand nine hundred and ninety-nine dollars.

(Signed) WILLIAM PINNEGAR,
Foreman.

After which the defendants file a motion for new trial.

And the case being further continued to the June Term, A. D. 1855, by agreement of parties, a new trial is granted, and by leave of Court the plaintiff amends his writ and declaration as follows:

Amendment.

CIRCUIT COURT OF THE UNITED STATES,
District of Rhode Island:

THOMAS RICHARDSON }
vs. }
CITY OF BOSTON. }

And now the pl'ff, by leave of the Court, here amends his writ and declaration as follows:

First. By striking out the sum constituting the addamnum in said writ, and inserting in lieu thereof the sum of thirty-five hundred dollars.

Second. By adding the following count:—

Also for that the plaintiff before and at the time of the committing of the grievances by the said City of Boston, as hereinafter mentioned, was, and from thence hitherto hath been, and still is

lawfully seized and possessed of a certain other wharf, with the appurtenances thereto belonging, situated in Sea street in said Boston, known as Price's Wharf, and bounded as follows, to wit: Northerly on the south side of Summer street, and a highway, or town way, or public way to the sea, sometimes known as the town dock, extending from the corner of Summer street and Sea street to the channel, then bounded on the north by Sea street, to the land formerly of David W. Bradlee and Ann, his wife, and from Sea street running easterly, bounded by the land of said Bradlee and wife, to the channel or low water mark, and bounded easterly by the channel or low water mark, and also before and at the time aforesaid, and from thence hitherto, the plaintiff hath been, and still is seized and possessed of a certain other wharf, with the appurtenances thereto belonging, situated in Broad street, in said Boston, known as the Bull Wharf, and bounded thus: Westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches or thereabouts; northerly on land formerly belonging to Peleg Tolman, to low water mark, measuring about six hundred and fifty-three feet, more or less; easterly on low water mark, there measuring fifty-two feet or thereabouts; southerly on the highway, or town way, or public way aforesaid, sometimes called the Town Dock, to low water mark, measuring about six hundred and sixty feet, more or less.

And the plaintiff avers that the way aforesaid, upon which said respective wharves, bound as aforesaid, was at the time of the committing of the grievances hereinafter alleged, and for a long time prior thereto, had been a public highway, or town way, or public way to the sea or low water, duly laid out and established pursuant to law, and by reason thereof the said plaintiff, during all the time aforesaid, had ought to have, and still ought to have free egress and ingress with boats and vessels of every description upon, over and through said way, to and from the wharves so by him possessed, as aforesaid, from and to the channel of the sea; yet the said City of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said plaintiff in that behalf, and to deprive him of the use and benefit of said way, whilst he, the said plaintiff, was so possessed of his said wharf, with the appurtenances, as aforesaid, to wit: in the thirteenth day of September, in the year of our Lord eighteen hundred and fifty, wrongfully and injuriously kept and continued and caused to be kept and continued divers large quantities of wood and timber in and across the said way before then wrongfully placed, and erected and caused to be placed and erected by the said City of Boston, in and across the said way for a long space of time, to wit, hitherto and thereby during all the time aforesaid, the said way was, and still is greatly obstructed and stopped up, and the said plaintiff, by means thereof could not, during all the time aforesaid, or any part thereof, nor can he now have or enjoy the said way, as he of right ought to have

done, and otherwise might and would have done, and has been, and is by means of the premises, deprived of the use, benefit, and advantage thereof, and by means thereof the access of boats and vessels to said wharves, and the egress therefrom to the sea has been interrupted and destroyed, and great quantities of mud, earth, and other materials have been thrown and deposited upon and near the said wharves, and thereby the use and enjoyment thereof, and the value of the plaintiff's estate therein has been greatly injured, and the plaintiff has been by reason of the premises obliged to reduce, and has reduced and been unable to get and obtain the rents which he has formerly been accustomed to obtain, or those which he was entitled to receive from the said wharves or the use thereof.

And the case being called for trial, is committed to the following jury.

George Robinson, *Foreman*,	James M. Davis,
Christ'r S. Crandall,	William James,
Hicks Cornell,	Dana Clarke,
Chas. W. Woodruff,	Benj. Watson,
Thos. Pearce,	Noah Wight,
Thos. B. Tibbitts,	Wilbur Hazard,

Who render the following verdict.

The jury find that the defendants are not guilty in manner and form as the plaintiff in his declaration has alleged.

(Signed) GEORGE ROBINSON,
Foreman.

Judgment.

Whereupon it is considered by the Court here that the defendant have and recover of the plaintiff his costs of such, taxed at five hundred seventy-three dollars and forty-three cents.

And after the rendition of the above judgment the pl'ff enters the following

Petition for Writ of Error.

RHODE ISLAND DISTRICT, ss.

Circuit Court of the United States, in the case

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

To the Honorable John Pitman, Judge of the United States for said Rhode Island District:—

The said Thomas Richardson respectfully represents that at the present June term, 1855, of said Court, judgment was rendered against him in favor of the defendant in said cause, upon the verdict

of the jury therein. That the said plaintiff excepted to the charge of the Court to the jury, and their ruling of the law in said case, as fully appears in the bill of exceptions filed in said case. Whereupon said plaintiff prays that a writ of error may be allowed in said cause, returnable to the next December term of the Supreme Court of the United States, to be holden at Washington. By his attorney.

E. H. HAZARD.

October 1st, 1855.

Let a writ of error issue.

JOHN PITMAN,
Dis't Judge U. S., Rhode Island District.

And with the above petition was presented and approved the following

Bond for Costs.

CIRCUIT COURT OF THE UNITED STATES,
for the First Circuit, and for the District of Rhode Island.

THOMAS RICHARDSON
vs.
CITY OF BOSTON. } In error.

Know all men by these presents, that I, Thomas Richardson, of Providence, in the State of Rhode Island, as principal, and I, Thomas F. Richardson, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, as surety, our heirs, executors, and administrators, are held and firmly bound unto the above-named City of Boston, in the sum of two thousand dollars, to be paid to the said City of Boston, and its successors, to which payment, well and truly to be made, the said Thomas Richardson as principal, and the said Thomas F. Richardson as surety, bind themselves jointly and severally, and their, and each of their heirs, executors, and administrators.

In witness whereof, the said Thomas Richardson, and the said Thomas F. Richardson have hereunto affixed our hands and seals, this first day of October, A. D. eighteen hundred and fifty-five.

Whereas the above named Thomas Richardson has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit, by the Circuit Court for the first Circuit in and for the District of Rhode Island:

Now, therefore, the condition of this obligation is such, that if the above named Thomas Richardson shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail

to make good his plea, then this obligation shall be null and void, otherwise the same shall be and remain in full force and effect.

THOS. RICHARDSON. [L. S.]
T. F. RICHARDSON. [L. S.]

In presence of
SYDNEY BARTLETT, Jr.,
DAVID THAXTEN.

October 1st, 1855. Approved.

JOHN PITMAN,
Dist. Judge U. S. for R. Island District.

Bill of Exceptions.

CIRCUIT COURT OF THE UNITED STATES,
Rhode Island District:

THOMAS RICHARDSON
vs.
CITY OF BOSTON.
} June Term.

Be it remembered that at a term of the Circuit Court of the United States for the first Circuit, holden at Newport within and for the District of Rhode Island, on the eighteenth day of September, eighteen hundred and fifty-five, by the Honorable John Pitman, District Judge, came Thomas Richardson, of Providence in the State of Rhode Island, in said District, merchant, a citizen of said State of Rhode Island, and by an action of trespass on the case declared against the City of Boston, a corporation duly established by law in the State of Massachusetts, all the members of which corporation are citizens of said State of Massachusetts, in the District of Massachusetts, as by the writ and declaration of record will appear, to which the defendant pleaded the general issue which was joined, and thereupon said action came on for trial before said Circuit Court at the term and time aforesaid, before a jury impanelled for that purpose, and the plaintiff then and there, to maintain and prove the issue on his part, submitted to the Court and jury and offered in evidence a duly authenticated copy of judgment there before rendered by said Circuit Court for said District of Rhode Island, at a term of said Court held at Newport within and for said District, on the fifteenth day of June, eighteen hundred and fifty-three, the record of which judgment is as follows:—

UNITED STATES OF AMERICA,
Rhode Island District, ss:

At a Circuit Court of the United States for the first Circuit within and for the Rhode Island District, begun and holden at Newport on the fifteenth day of June, A. D. 1853, present, Hon. Benj. R.

Curtis, Associate Justice Supreme Court United States; Hon. John Pitman, U. S. District Judge Rhode Island District; Geo. H. Brown, Esq., United States District Attorney; Francis C. Gardiner, United States Marshal; John S. Pitman, Clerk.

Be it remembered that at the November term of said Court, A. D. 1852, the following transcript from the record of the Circuit Court of the United States within and for the Massachuecetts District was certified to this Court.

UNITED STATES OF AMERICA,
Massachusetts District:

October Term, 1852.

At a Circuit Court of the United States for the first Circuit and District of Massachusetts, begun and holden at Boston on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-two, before the Hon. Benj. R. Curtis, Associate Justice, Hon. Peleg Sprague, District Judge,

THOMAS RICHARDSON, of Providence, in the State of Rhode Island, merchant, a citizen of said State of Rhode Island, plaintiff,

vs.

THE CITY OF BOSTON, a corporation established by law in the State of Massachusetts, all the members of which are citizens of said State, in our District of Massachusetts, defendants:

1st. In a plea of trespass on the case, for that whereas, the said plaintiff before and at the time of the committing of the grievances by the said City of Boston, as hereinafter next mentioned, was and from thence hitherto hath been and still is lawfully seized and possessed of a certain wharf, with the appurtenances thereto belonging, situated in Sea street in said Boston, known as Price's wharf, and bounded as follows, to wit: northerly on the south side of Summer street and the dock at the end thereof, extending from the corner of Summer and Sea streets formed by the east side of Sea street, and by the south side of Summer street to the channel; then bounded on the north by Sea street from the aforesaid corner to the land of David W. Bradlee and Ann his wife; then bounded southerly by said land of said Bradlee and Ann his wife in her right, and extending from Sea street out to the channel; and then bounded easterly by the channel; and by reason thereof he, the said plaintiff, during all the time aforesaid ought to have had and still of right ought to have a certain way from said wharf unto the channel or low water mark, for himself and servants, and his vessels to go, return, pass, and repass every year and at all times of the year at his free will and pleasure, as to the said wharf of plaintiff belonging and appertaining: Yet the said City of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said plaintiff in that behalf, and to deprive him of the

use and benefit of said way and dock, whilst he, the said plaintiff, was so possessed of his said wharf with the appurtenances as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day of the purchase of this writ, wrongfully and injuriously placed and erected, and caused to be placed and erected divers large quantities of wood and timbers in and across the said way or dock, and kept and continued the said wood and timbers, so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, and thereby during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up, and the said plaintiff by means thereof could not, during all the time aforesaid, or any part thereof, nor can they now have or enjoy their said way or dock as they of right ought to have done and otherwise might and would have done, and have been and are by means of the premises deprived of the use, benefit, and advantages thereof.

2d. Also for that the plaintiff, before and at the time of the committing of the grievance by the said City of Boston, as hereinafter next mentioned, was and from thence hitherto hath been and still is lawfully seized and possessed of a certain other wharf, with the appurtenances thereto belonging, situated in Sea street in said Boston, known as Price's wharf, and bounded as follows, to wit: northerly on the south side of Summer street and the town dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and by the south side of Summer streets, to the channel; then bounded on the north by Sea street, from the aforesaid corner to the land of David W. Bradlee and Ann, his wife, in her right, and extending from Sea street out to the channel, and then bounded easterly by the channel; and the plaintiff avers that said dock, forming the northerly boundary of the estate so by him possessed as aforesaid, was at the time of the committing the grievances hereinafter alleged, and for a long time prior thereto, had been a public dock, slip, or way, and by reason thereof he, the said Richardson, during all the time aforesaid, had ought to have, and still ought to have free egress with boats and vessels of every description upon, over and through said dock, from the wharf so by him possessed as aforesaid, to the channel of the sea, and from said channel of the sea to his said wharf; yet the said City of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said plaintiff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he, the said plaintiff was so possessed of his said wharf, with the appurtenances as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ, wrongfully and injuriously placed and erected and caused to be placed and erected, divers large quantities of wood and

timber in and across the said way or dock, and kept and continued the said wood and timber so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, and thereby during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up, and the said plaintiff by means thereof could not during all the time aforesaid, *the said way and dock were and still are greatly obstructed and stopped up, and the said plaintiff by means thereof could not during all the time aforesaid* or any part thereof, nor can he now have or enjoy his said way or dock as he of right ought to have done and otherwise might and would have done, and has been and is by means of the premises deprived of the use, benefit, and advantage thereof.

3d. Also for that whereas the said plaintiff, before and at the time of the committing of the grievance by the said City of Boston, as hereinafter next mentioned, was and from thence hitherto has been and still is lawfully seized and possessed of a certain wharf, with the appurtenances thereto belonging, situated in Broad street, so called in said Boston, known as the "Bull wharf," and bounded thus, westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches or thereabouts, northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less, easterly or southeasterly on low water mark, there measuring fifty-two feet or thereabouts, southerly or southeasterly on a way or dock, there measuring six hundred and sixty feet more or less; and by reason thereof he, the said plaintiff, during all the time aforesaid ought to have had and still of right ought to have a certain way from his said wharf unto the channel or low water mark for himself and servants and his vessels to go, return, pass, and repass every year and at all times of the year at their free will and pleasure as to the said wharf of the said plaintiff belonging and appertaining; yet the said City of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said plaintiff in that behalf, and to deprive him of the use and benefit of said way and dock, whilst he the said plaintiff was so possessed of his said wharf, with the appurtenances as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ, wrongfully and injuriously placed and erected and caused to be placed and erected divers large quantities of wood and timber in and across the said way or dock, and kept and continued the said wood and timber so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, and thereby during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up, and the said plaintiff by means thereof could not during the time aforesaid or any part thereof, nor can he now

have or enjoy his said way or dock as he of right ought to have done and otherwise might and would have done, and has been and is by means of the premises deprived of the use, benefit, and advantage thereof. Also for that the plaintiff before and at the time of the committing of the grievances by the said City of Boston, as hereinafter next mentioned, was and from thence hitherto hath been and still is lawfully seized and possessed of a certain other wharf, with the appurtenances thereto belonging, situated in Broad street, so called in said Boston, known as the "Bull wharf," and bounded thus, westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts, northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less, easterly or southeasterly on low water mark, there measuring fifty-two feet, or thereabouts, southerly or southwesterly, on the town way or dock, there measuring six hundred and sixty feet, more or less.

4th. And the plaintiff avers that said dock, forming the southerly boundary of the estate so by him possessed as aforesaid, was, at the time of the grievance hereinafter alleged and for a long time prior thereto, had been a public dock, slip or way, and by reason thereof he the said plaintiff, during all the time aforesaid, had ought to have, and still ought to have free egress with boats and vessels of every description upon, over and through said dock from the wharf so by him possessed as aforesaid, to the channel of the sea, and from said channel of the sea to his said wharf. Yet the said City of Boston, well knowing the premises, but wrongfully and unjustly contriving and intending to injure the said plaintiff in that behalf, and to deprive him of the use and benefit of said way and dock whilst he the said plaintiff was so possessed of his said wharf with the appurtenances as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ, wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of wood and timber in and across the said way or dock, and kept and continued the said wood and timber so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, and thereby during all the time aforesaid, the said way and dock were and still are greatly obstructed and stopped up, and the said plaintiff, by means thereof, could not, during the time aforesaid, or any part thereof, nor can he now have or enjoy said way or dock as he of right ought to have done, and otherwise might and would have done, and has been, and is by means of the premises, deprived of the use, benefit and advantage thereof.

5. Also, for that before and at the time of the committing of the grievance by the said City of Boston, as hereinafter next mentioned,

a certain wharf, with the appurtenances thereto belonging, situated in Sea street, in said Boston, known as Price's Wharf, and bounded northerly on the south side of Summer street and the dock at the end thereof, extending from the corner of Summer and Sea streets formed by the east side of Sea street and the south side of Summer street, to the channel, was in the possession and occupation of one Calvin Bullard as tenant thereof to the plaintiff, the reversion thereof then and still belonging to the plaintiff, and then and there a certain other wharf situated on Broad street so called, in Boston, known as the Bull Wharf, and bounded southerly on the dock aforesaid to low water mark, was then and there in the possession and occupation of Lecraw & Perkins as tenants thereof to the plaintiff, the reversion thereof then and still belonging to the plaintiff, and by reason thereof the plaintiff ought at all times forever after the determination of said tenancies, and the said tenants during the said tenancy, to have a certain way from east of said wharves unto the channel or low water mark for himself, his servants and vessels to go, return, pass and repass every year, and at all times of the year, of their free will and pleasure, as to said wharf belonging and appertaining. Yet the said City of Boston, well knowing the premises, but contriving and intending wrongfully and unjustly to injure the plaintiff in his reversionary estate and interest of and in said respective wharves, with the appurtenances, while said wharves were so in the possession and occupation of said tenants, and while the plaintiff was so interested therein as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ, wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of wood and timber, stone and earth, in and across the said way or dock, and kept and continued the said wood and timber, stone and earth so placed and erected in and across the said way or dock as aforesaid, for a long space of time, to wit, hitherto, by means of which said several premises the plaintiff hath been and is greatly injured and prejudiced in his reversionary estate and interest of and in the said wharves respectively, with their appurtenances, so in possession of the said Lecraw & Perkins, and Bullard, respectively, as tenants thereof to the plaintiff.

Also, for that before and at the time of the committing of the grievances by the said City of Boston, as hereinafter mentioned, a certain wharf with the appurtenances thereto belonging, situated in Sea street in said Boston, known as Price's Wharf, and bounded northerly on the south side of Summer street and the public or town dock at the end thereof, extending from the corner of Summer street and Sea street, formed by the east side of Sea street and the south side of Summer street, to the channel, was in the possession and occupation of one Calvin Bullard as tenant thereof to the plaintiff, the reversion thereof then and still belonging to the

plaintiff; and then and there a certain other wharf, situated in Broad street so called in said Boston, known as the Bull Wharf, and bounded southerly on the public or town dock, as aforesaid, to low water mark, was then and there in the possession and occupation of Lecraw & Perkins, as tenants thereof to the plaintiff, the reversion thereof then and still belonging to the plaintiff; and the plaintiff avers that the dock aforesaid, upon which said respective wharves bound as aforesaid, was at the time of the committing of the grievances hereinafter alleged, and for a long time prior thereto, had been a public way, slip or dock, and by reason thereof the plaintiff ought at all times forever after the termination of the tenancies aforesaid, to have free egress and passage with boats and vessels of every description upon, over and through said dock or way from the said respective wharves aforesaid to the channel of the sea, and from the channel of the sea to said wharves.

Yet the said City of Boston, well knowing the premises, but contriving and intending to injure the plaintiff in his said reversionary interest and estate of and in said respective wharves, and their appurtenances, while said wharves were so in the possession and occupation of said tenants, and while the plaintiff was so interested therein, as aforesaid, to wit, on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and forty-nine, and on divers other days and times between that day and the day of the purchase of this writ (viz: the 13th day of September, A. D. 1850), wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of wood and timber, stone and dirt, in and upon and across the said way or dock, and continued the same so placed and erected in and upon said way or dock for a long space of time, to wit, hitherto, by means of which said several premises, the plaintiff hath been and is greatly injured and prejudiced in his said reversionary interest and estate of and in said wharves respectively, with their appurtenances, so in the possession of said Lecraw and Perkins, and Bullard, respectively, as tenants thereof of the plaintiff, to the damage of the said Richardson, as he says, the sum of fifty thousand dollars.

Whereupon a deputy of the Marshal made his return, which is in the words following, viz:—

UNITED STATES OF AMERICA,
Massachusetts District, ss.

BOSTON, September 14th, 1850.

Pursuant hereunto, I have this day summoned the within named City of Boston, defendant, to appear and for the purposes as within commanded, by giving in hand to Samuel F. McCleary, Esq., "The City Clerk," so called, a true and attested copy hereof, for said City and appearance at Court. I also give in hand to Billings Briggs,

Esq., one of the "principal inhabitants" of said City, to wit, "an alderman," a like copy for said City's appearance at Court.

Services, $4 00
2 Copies, 4 00
Travel, 05
——$8 05

P. RILEY,
U. S. Deputy Marshal Mass'ts District.

This action was entered at the October Term of this Court, A. D. 1850, when the parties appeared, by their respective attornies, and on the 28th day of March, A. D. 1851, the plea of general issue was filed as follows, viz:

CIRCUIT COURT U. S.,
Massachusetts District:

THOMAS RICHARDSON
vs.
CITY OF BOSTON. } October Term, 1850.

And now the said defendant comes, &c., when, &c., and for plea says that it is not guilty of the grievances laid to its charge in manner and form as the said plaintiff hath thereof complained against it, and of this puts itself upon the country.

By its Attorney, PELEG W. CHANDLER.

And the plaintiff doth the like,

By his Attorney.

CIRCUIT COURT U. S.,
Massachusetts District, ss.

THOMAS RICHARDSON
vs.
CITY OF BOSTON. } October Term, 1850.

And for a further plea in this behalf to the several counts in the plaintiff's declaration contained, the said City of Boston, by leave of the Court for that purpose first had and obtained, says, that the plaintiff his action aforesaid against it ought not to have or maintain, because it says that the said dock, way, and slip at the northerly side of the Price's wharf, and at the southerly or southeasterly side of the Bull Wharf, in his said declaration mentioned, and in which, &c. now are and at the said several times when, &c. were the close, soil and freehold of the said City, wherefore the said City in its own right at the said times when, &c. placed and erected and caused to be placed and erected, the said quantities of wood and timber, and stone, and earth, and dirt, in and across said way, slip and dock, and kept and continued the same so placed and erected in and across said way, slip and dock in which, &c., so being the

close, soil and freehold of the said City, as it might lawfully do, and this it is ready to verify: Wherefore it prays judgment whether the said plaintiff his action aforesaid against it ought to have or maintain, and for its costs.

By its Attorney, P. W. CHANDLER.

CIRCUIT COURT U. S.,
Massachusetts, ss.

THOMAS RICHARDSON
vs.
CITY OF BOSTON. } October Term, 1850.

And the said plaintiff, as to the said plea of the said defendant, by it secondly above pleaded, saith, that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having and maintaining his aforesaid action thereof against it, the said defendant, and that the said plaintiff is not bound by law to answer the same, and this he, the said plaintiff, is ready to verify: Wherefore, for want of a sufficient plea in this behalf, he, the said plaintiff, prays judgment, and his damages by him sustained on occasion of the committing of the said grievances in the said declaration mentioned, to be adjudged to him.

And for causes of demurrer, the plaintiff shows—

1st. That the matters in said plea contained neither traverse or deny, confess or avoid the facts set forth in either of the counts in plaintiff's declaration.

2d. That even if the matters in said plea did so traverse or deny the facts set forth in plaintiff's said counts and declaration, yet said plea amounts to the general issue.

And afterwards, to wit, on the first day of April, A. D. 1851, the plaintiff had leave to amend as follows, viz:—

CIRCUIT COURT U. S.,
Massachusetts District:

RICHARDSON
vs.
CITY OF BOSTON. } October Term, 1851.

And now the said plaintiff, by leave of the Court, here amends his declaration by adding at the end of the last two counts:

And by means thereof the access of boats and vessels to said wharves, and the egress therefrom to the sea has been interrupted and destroyed, and great quantities of earth, mud and other materials have been floated to and deposited upon and near the said wharves, and thereby the use and enjoyment thereof, and the value of the plaintiff's reversionary estate therein has been greatly injured.

And thence this action was continued unto the May term of this

Court, A. D. 1851, when and where the parties appeared, and having agreed upon a statement of facts, submitted the same to the Court as follows, viz:—

CIRCUIT COURT U. S.,
Mass'ts District:

THOMAS RICHARDSON
vs.
CITY OF BOSTON.
} May Term, 1851.

This is an action on the case against the City of Boston, for erecting and continuing a nuisance in a certain ancient public dock, situate near the foot of Summer st., in Boston, between two wharves belonging to the plaintiff, and long known as the Price & Bull wharves. The structure complained of as a nuisance is a large drain built of timber, projects above the water at high tide, and in a great measure, but not entirely, prevents the access of vessels to both the plaintiff's wharves.

To show the origin and history of this dock, which was admitted by the defendants to be an ancient public dock or highway, and to show the rights of the plaintiff and those under whom he claims therein, the plaintiff offered the following evidence:—

1st. The plans drawn by S. P. Fuller and verified by him.

2d. The following deeds, &c., in the lieu of title of the Bull wharf:—

Gridley's possession from the book of possessions in Boston.

Gridley's liberty to wharf, March 31, 1673.

Gridley's restriction as to limits of wharf, not to wharf before Town's ground and highway, March 2, 1673–4.

Gridley to Gill, 11 March, 1672.

Gill's liberty to wharf, May 2d, 1674.

Gill by will to Belcher, 7th Feb'y, 1678.

Act of towns taking out way 30 feet wide from lower end of Gill wharf, Oct. 31, 1683.

Belcher to Derby, 29 Aug., 1700.

Derby's division, 1 Nov'r, 1744.

Pedigree of Mrs. Mary Robbins, daughter of Derby, admitted.

Mary Robbins' division, setting off this wharf, &c. to J. D. Robbins, March 6th, 1802.

John D. Robbins to Thomas N. and John French and the pl'ff, 29th July, 1835.

John French to Richardson (pl'ff), 8 June, 1836.

Thomas N. French to Alger, 27 Oct., 1836.

Alger to Richardson (pl'ff), 10 Feb'y, 1848.

3d. The following deeds, &c., in the line of title of the Price wharf:—

Baxter's possession from the Book of Possessions in Boston.

Baxter to Bull, 12 Dec., 1668.

Bull liberty to wharf, May 25th, 1674.

Heirs of John Bull to Jon'n Bull, 3d April, 1724.

Marriage of Elizabeth Bull, the only daughter of Jon'n Bull, to Roger Price, 14 April, 1735.

Elizabeth Price to Lawson Valentine, July, 1820.

Andrew Price to same, 20th July, 1821.

Osgood, guardian of heirs of Valentine, to John French, 5th June, 1835.

John French to Pl'ff, 8th June, 1836.

4th. Extracts from the town records showing Summer street extends to Sea.

5th. Act of Legislature enabling Richardson to extend Bull wharf, and lay vessels at sides, &c., with the proviso in the act contained.

The plaintiff asserted that the existence of the obstructions complained of, and also the discharge through the same of the foul matter collected and discharged by the sewer caused an accumulation of mud and other substances to be deposited by the tides on and near his said lands and wharves six or eight feet deep, so as permanently to injure the same. But the evidence respecting this on each side was not put in, for the reason which will hereafter appear.

It appeared that the said Bull wharf was under a written lease for a term expiring April 1, 1851, and that the said Price wharf was held by tenants at will, and the plaintiff offered to prove that in consequence of the erection of the alleged nuisance he had necessarily reduced the rents.

The defendants put into the case the following papers:—

Extract from Selectmen's records concerning drain in Summer street, award in case of Derby *vs.* Adams.

List of proprietors of common shore (objected to by plaintiff as not admissible in evidence).

Orders of notice as to same.

A paper concerning the same, the admissibility of which is denied by the plaintiff.

Assessment (so purporting) of cost of repairs of said drain, the admissibility of which is denied by the plaintiff; also appointment of a committee to inspect repairs of same.

Liberty to Robbins to build a head to dock, fill up the same, he laying a common shore therein.

Order of notice, &c., concerning common shore in Summer street. Plaintiff objects to this as evidence.

Assessment of costs of repairs. Same objection is made.

Notice and petition concerning the same. Same objection is made.

Petition of the pl'ff, and notice, &c., as to extending the common shore.

Petition as to relaying drain.

Records of Municipal Court (objected to by plaintiff as inadmissible).

City ordinances as to the Board of Health (objected to by plaintiff as inadmissible).

Document as to extending the shore (objected to by plaintiff as inadmissible.)

Certain orders as to obstructions in Summer street (objected to by pl'ff as inadmissible).

Liberty to sq. this land to wharf.

Extracts from town records concerning Sea street.

The papers before mentioned in relation to this drain, which are objected to by plaintiff, were produced at the trial by the Superintendant of Common Sewers, in whose custody they have been for many years.

The defendants also offered certain oral evidence, a report of which is hereto annexed. The deposition of Joseph Jones, taken by defendant, and tho' not filed, yet loaned to plaintiff's counsel before trial, is to be put into the case if plaintiff has by law the right to use it. It was agreed that the case should be taken from the jury and that the Court should determine—

1st. Whether upon the facts the plaintiff the plaintiff is entitled to recover any damages.

2. If not, whether he would be so entitled, upon proof that the alleged nuisance causes mud and other substances to be deposited and accumulated by the tides, at the end and sides of his wharf, below and near low water mark, so as to injure the value thereof?

3. Whether he would be so entitled, upon proof that the drain in question might have been so constructed as not to obstruct the access of vessels to the plaintiff's wharves, or to cause the deposit and accumulation aforesaid?

4. What is the measure or rule of damages, if any, upon the determination of these questions, if the Court shall be of opinion that the plaintiff is or may be entitled to recover? The case is to be submitted to a jury, under such instructions as the Court may think fit, otherwise the plaintiff is to be nonsuit.

Oral Testimony of Defendants.

Samuel Leeds. Have lived in Boston since 1808. Resided first near the foot of Summer Street, and my place of business was near the head of Bull Wharf, on the south side.

There was a large dirt-catcher put there to catch the surface-dirt. Then the city did not clear the streets, and the countrymen caught the surface-drainage. I don't know anything about the underground drainage. The top water came down in very large quantities, and ran into the dock.

E. P. Dolbear. Have lived in Boston about sixty years; have known Bull & Price's wharves well since 1820; I occupied the Price Wharf; was a shipwright and caulker. There was a drain

down in the dock there when I went there, about six feet below the bulkhead or street, or about on a level with the dock or town slip; we used to call it the "town slip." The top-water came down into a cesspool, and the countrymen came and took up the manure. The catcher was up above the dock; when it was full, it run over into the dock.

An engine-house stood over the dock; can't tell the year, but it was, say 1822; my north line came on the line of the slip. It was admitted by plaintiff that the general system of drainage is into the sea.

Stephen P. Fuller. Called by plaintiff; identified the plans. The first time I surveyed there was in 1822. There was a drain there of the ordinary size of common sewers; at that time it drained the houses to a considerable extent, or the surface-water was not let into it. The present drain is three or four times larger. The present drain drains from Tremont Street, Winter Street, and Washington Street, and the surface-water is let into it.

For the purpose of the present hearing, it is agreed that the enlargement of the drain to its present dimensions, in the neighborhood of the dock, was made in 1836, and through the rest of Summer Street in 1841; the top-water was let into the drain at the same time.

P. W. CHANDER,
for Def't.

G. BARTLETT,
for Pl'ff.

And thence this action was continued unto the October term, A. D. 1851, when the following agreement of parties was filed, to wit:—

RICHARDSON
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It is agreed that, upon the decision of this case in this Court, it shall be placed in such position as shall enable the party against whom it may be to take the case to the Supreme Court of the United States, if such party shall so elect, without a new trial upon any other subject except for damages, under the ruling of the Court.

G. BARTLETT,
for Pl'ff.

P. W. CHANDLER,
for Def't.

And from that term this action was continued unto the May term, A. D. 1852, when the plaintiff had leave to amend his declaration as follows, viz:—

RICHARDSON
vs.
CITY OF BOSTON.

UNITED STATES CIRCUIT COURT:

May Term.

And now plaintiff amends his declaration by leave of the Court here, as follows, by adding to the amendment of the two last counts thereof, heretofore filed, the words following: "And plaintiff has been obliged to reduce, and has reduced, and has been unable to get and obtain the rents which he has formerly been accustomed to obtain, or that he was entitled to receive from said wharves.

And by adding the same words at the end of each of the other counts in said declaration.

And by adding after the word "Bullard the words "certain," Robert Emerson and John Emerson," in each of the counts.

And afterwards, at that term, to wit, on the 4th day of October, 1852, the defendants, by their attorney, filed the following petition, viz:—

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts:

First Circuit. May Term, 1852.

THOMAS RICHARDSON
vs.
CITY OF BOSTON.

And now the defendants come into Court, and respectfully represent that the above entitled action is a suit brought by the plaintiff, alleging himself to be a citizen of the State of Rhode Island against the city of Boston, a corporation established, and whose citizens reside within the said district of Massachusetts, for the recovery of damages for an alleged nuisance or encroachment upon certain rights of way or easements claimed by the plaintiff to be appurtenant to certain wharves and tenements, of which he declares himself to be the owner, and which damages are laid in his writ and declaration at the sum of fifty thousand dollars; that these defendants, denying that the plaintiff has any such rights of way or easements appurtenant to any such wharves or tenements, as in his said writ and declaration alleged, have pleaded that they are not guilty, and that the case now stands for trial by the jury.

That by the laws of the Commonwealth of Massachusetts, all the citizens or inhabitants of any city or town within the same, and all their estates, real and personal, are liable to be taken on execution

for the payment of any debt due from such city or town to the plaintiff in such execution. And the said citizens or inhabitants are liable to be taxed and assessed, in order to raise the means of paying and discharging such debts, and that the damage, if any shall be recovered by the plaintiff in this suit, must be paid for out of moneys to be raised by levy of an execution to be issued therein upon the estates of the said city, or of some one or more of the inhabitants thereof, or by damages to be assessed upon them, so that every inhabitant or citizen of said city of Boston liable to taxation is directly interested in the result of said suit. That the Honorable the Associate Judges of the Supreme Court of the United States for this circuit is incompetent to sit in the trial of said suit, and has declared so to do, by reason of having been heretofore of counsel of one of the parties thereto, and that the Honorable the Judge of the District Court is an inhabitant and citizen of said city of Boston, paying taxes therein, and the amount of whose taxes must be in greater or less degree dependent upon the judgment that shall be finally rendered therein, and so is directly interested in the result thereof. Wherefore, the defendants humbly pray that process may issue for the removal of the said suit to some neighboring circuit of the Supreme Court of the United States for the trial thereof, pursuant to the statute in such case made and provided.

PELEG W. CHANDLER,
of Counsel for the Def'ts.

And thence this action was continued unto this present term. And now it is ordered by the Court, that the Clerk do enter on the record of this case the fact that the Honorable Benjamin R. Curtis, one of the Associate Justices of the Supreme Court of the United States, who is assigned to this Circuit, has been of counsel with the said plaintiff while practicing at the bar, and therefore declines to sit in this case; and also the further fact, that the Honorable Peleg Sprague, District Judge of the United States for this District, is an inhabitant of the City of Boston, and so interested in the result of this suit, and therefore declines to sit in this case. And afterwards at this Term the plaintiff, by his attorney, files the following motion, viz:—

CIRCUIT COURT UNITED STATES,
Massachusetts District:

THOMAS RICHARDSON
vs.
CITY OF BOSTON.
} October Term, 1852.

And now it having been entered of record in this suit, that both the Judges of this Court are incompetent by law to try the same, either by reason of being concerned in interest therein, or having been of counsel in said cause: The plaintiff moves the Court here

that an order be passed, that an authenticated copy of said entry, with all the proceedings in said suit or action, be forthwith certified to the most convenient Circuit Court in the next adjacent State.

By S. BARTLETT,
his Attorney.

Whereupon, to wit, on the fifteenth day of October, A. D. 1852, it is ordered that an authenticated copy of the record and all the proceedings in this suit be forthwith certified to the Circuit Court next to be holden at Providence, within and for the District of Rhode Island, on the fifteenth day of November next, the same being the most convenient Circuit Court in the next adjacent State.

UNITED STATES OF AMERICA,
Massachusetts District, ss.

I, Isaac O. Barnes, Clerk of the Circuit Court of the United States for the First Circuit, Massachusetts District, do hereby certify that the foregoing is a true copy of the record of the case of Thomas Richardson *versus* The City of Boston.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Boston, this second day of November, A. D. 1852, and in the seventy-seventh year of the Independence of the United States of America.

[L. S.] ISAAC O. BARNES,
Clerk.

And the case being continued to said June Term, 1853, it is called for trial, and argued by counsel upon the agreed statement of facts filed therein, and the following opinion was delivered by the Court thereon:—

CIRCUIT COURT,
R. I. District:

THOMAS RICHARDSON
vs.
CITY OF BOSTON.
} June Term, 1853.

Opinion of J. Pitman, District Judge.

I am satisfied, from the evidence submitted to the Court, that the plaintiff, at the time of this action, was and is the owner of the Price Wharf and the Bull Wharf, as stated in his declaration; that between these wharves there is and has been an ancient public dock or highway, and that the plaintiff, at the time of the obstruction by him complained of, had a reversionary right to free egress and passage with boats and vessels upon, over and through said dock or way, from the said respective wharves to the channel of the sea, and from the channel of the sea to the said wharves.

It is admitted "that the dock is an ancient public dock or highway, and that the structure complained of, in a great measure, prevents the access of vessels to both the plaintiff's wharves; but it is justified on the part of the City of Boston as necessary to be done for the health of the city, and that it was done under the authority and by the order of the Board of Health of said city. Whether the city has a right to fill up this dock for the purposes of a travelled street, and if so, whether the injury to the pl'ff by such an act must be compensated in damages, are questions which, in my view, do not arise in this cause upon the agreed statement of facts. The statement of facts does not show that the City of Boston intends to fill up this dock, and to make it a street for travel; the Mayor and Aldermen have not ordered this to be done, but only that the drain should be extended "five hundred feet in the direction of the channel over the land and flats belonging to the city," and there is nothing to induce us to suppose that this act was a *beginning* to make a street by filling up this ancient dock or way. On the contrary, by a copy of the doings of the Mayor and Aldermen on the 21 Aug., 1849, in reference to another obstruction said to be caused by the pl'ff, it appears, that after a personal inspection of the premises, they declared their opinion that the way "in that part of Summer street, as anciently described and laid out, lying between Broad street and the sea, that the said way ought to be kept open from Broad street to the sea."

The right of drainage as used from 1710 to 1836, by those being in Summer street, under the direction and by permission of the town of Boston, as appears by the records in the agreed statement of facts, does not in my view justify the extraordinary structure which the plaintiff complains of, and if this be necessary for the purpose of draining Tremont street, Winter street, and Washington street (see testimony of Stephen P. Fuller), and to prevent those nuisances for which the City was indicted in December, 1848, and June, 1849, an extraordinary state of circumstances may call for extraordinary remedies; of this necessity the Mayor and Aldermen of the City of Boston, as constituting the Board of Health, are the proper judges, and are not to be rejudged by this Court. But in reference to the rights of citizens whose property may be injuriously affected by what may be deemed necessary by the Board of Health for the health of the City, the Courts of Justice established for the vindication and preservation of private rights, are the judges. And the question here is not whether the structures complained of by the plaintiff were necessary or not for the health of the City, but whether the right which the plaintiff had to pass and repass from his wharves to the sea, and from the sea to his wharves, can be taken from him without just compensation, under the Constitution of Massachusetts. I am of opinion that this right cannot be taken from the pl'ff without compensation, and that the plaintiff is entitled

to recover against the City of Boston whatever damages he may prove under the sixth count of his declaration.

And the case was then tried, pursuant to the agreed statement of facts, and committed to the following jury:—

William Pinnegar, *Foreman*,	Stillman Welch,
Seth C. Bradford,	James Burlingame,
John T. Tilley,	Jeremiah B. Hazard,
John Hambly,	James Lewis,
James O. Sweet,	Jesse B. Crandall,
George O. Browning,	George W. Barney,

Who came into Court and rendered a sealed verdict, which is duly affirmed in the words following, to wit:—

The jury find the def'ts are guilty in manner and form as alleged in the sixth count of the pl'ff's declaration, and assess the damages at twelve hundred and nine dollars and sixty-nine cents.

(Signed) W'M PINNEGAR,
Foreman.

Judgment.

Whereupon it is considered by the Court here, that the pl'ff have and recover of the def'ts the sum of twelve hundred and nine dollars and sixty-nine cents debt, and costs of suit taxed at eight hundred and seventeen dollars and eighteen cents, amounting in all to the sum of two thousand and twenty-six $\frac{87}{100}$ dollars.

UNITED STATES OF AMERICA,
Rhode Island District, ss:

CLERK'S OFFICE, CIRCUIT COURT AT PROVIDENCE, Sept. 17th, 1855.

I, Henry Pitman, Clerk of the Circuit Court of the United States for the First Circuit within and for the District of Rhode Island, do hereby certify that the foregoing twenty-six pages contain a true copy from the records in the case 22, Thomas Richardson *vs.* The City of Boston, disposed of at the June term of said Court, A. D. 1853, on the nineteenth day of said term, to wit, July 20, 1853, duly examined and compared.

In testimony whereof I have hereunto set the seal of said Court and my hand on the day and year above written.

[L. S.] HENRY PITMAN,
Clerk.

And the plaintiff then and there requested said judge to rule and instruct the jury separately as to each of the counts in his said declaration in this suit.

1st. That said former judgment was and is conclusive evidence

as against the defendants, of the rights and interests of the plaintiff as set forth in said count in his declaration in this suit.

2d. That said judgment was and is conclusive evidence as against the defendant, of the existence of the rights and interests of plaintiff, as set forth in such counts at the time embraced by said judgment, and *prima facie* evidence of the continuance of said rights and interests in the plaintiff at the time set forth in said count.

3d. That said judgment was and is conclusive evidence as against the defendants of the existence of the rights and interests of plaintiff, as set forth in such count at the time embraced by said judgment.

4th. That said judgment was and is admissible in evidence in support of said count.

But his Honor the said Judge then and there refused to rule and instruct the jury in conformity with either of said requests, but did rule and determine that said judgment was not admissible in evidence for any purpose, and refused to admit the same to be put in evidence: to which refusals and ruling the plaintiff then and there excepted.

And further to maintain and prove the issue on his part, the plaintiff offered in evidence an agreed statement of facts made in said former case between said parties, signed by the counsel of the plaintiff and defendant, which statement of facts is contained in the copy of the judgment by the plaintiff offered in evidence as aforesaid.

But his Honor the Judge did then and there rule that said agreement was not admissible in evidence, and did reject the same: to which ruling and rejection plaintiff then and there excepted.

And further to maintain and prove the issue on his part, the plaintiff submitted to the Court and jury the documents and oral testimony as follows:

1. *Richard Gridley's Possession in Boston.*

One house and lott bounded with the streets south and west the bay easterly; and John Harrison northerly. Also another lot bounded with Robert Turner northwest, John Harrison southwest, the bay southeast, and the fort northeast.

John Harrison his Possession in Boston.

One house and lott bounded with Richard Gridley southerly, the bay easterly, Richard Gridley northerly, Robert Turner westerly.

A true copy from the book of possessions of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

2. *Gridley's Liberty to Wharf.*

31*st March*, 1673.

At a meeting of Capt. Thomas Lake, John Joyliff, Mr. Hezekiah Usher, Mr. Thomas Brattle, Capt. James Oliver, Capt. William Davis,

Mr. John Richards, libertie is granted to Richard Gridlie to wharfe before his owne land in proportion with other men.

A true copy of records of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

31st March, 1673.

3. *Prohibition to Gridley to Wharf.*

March ye 2nd, 1673–74.

Whereas upon the 31st of March, 1673, libertie was granted to Richard Gridley to wharfe before his own land in proportion with other men, and he hath lately for ends stated, put a proportion upon the flatts, not only before his own lands, but the towne's ground and highway adjoining his land: It is hereby ordered that the said Gridley do not proceed in wharfeing there without the consent and approbation of ye Selectmen first had and obtained, upon the penalty of twelve Shillings.

A true copy of records of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

4. *Gridley's Deed to John Gill.*

To all people to whome this present writeing shall come:

Richard Gridley, of Boston, in the County of Suffolk, in the Colony of the Massachusetts, in New England, sendeth, Greeting:— Know yee, that I, the said Richard Grigley, for and in consideration of the sum of twenty-five pounds, of lawful money of New England, to mee in hand at and before then sealing and delivery of these presents by John Gill, of Boston, aforesaid, marriner, well and truly payd, the receipt whereof I doe hereby acknowledge, and myselfe therewith fully satisfied and contented, and thereof and every of every part thereof do hereby acquitt and discharge to said John Gill, his heirs, executors, administrators, and assigns, forever, by these presents, have given, granted, bargained, sold, aliened, enfeoffed and confirmed, and by these presents do fully, cleearly and absolutely give, grant, bargain, sell, alien, enfeoff, and confirme unto the s'd John Gill all that piece and parcel of land situate, lying and being neere unto the s'd Richard Grigley's lime kill in the southerly end of the s'd Town of Boston, being butted and bounded, westerly with the land of James Flood, extending itselfe by the s'd Flood's line, forty foot northerly with the land of Robert Carver, southerly with the highway, and easterly with the sea, ranging from the said James Flood's line to low water mark, excepting only, and it is hereby reserved out of the s'd grant, a cart way through the said piece of land, at the end of forty foot, to be measured downward from the s'd James Flood's line towards the sea, for the use

and benefitt of the said Robert Carver's house: To have and to hold the s'd parcell of land, with all the profits, priviledges, and appurtenances to the same belonging, or in any wise appertaining, and also all writeings, deeds, and evidences touching and concerning the premises onely, or onely any part thereof, unto the s'd John Gill, his heirs, executors, administrators and assigns, and to his and their owne sole and proper use and behoofe forever. And I, the said Richard Gridley, doe for mee, my heirs, ex'ors and administrators, covenant, promise and grant by these presents, that at the tyme of then sealing and delivering of these presents, I am the true, sole and lawful owner of all the above bargained premises, and am lawfully seized of and in the same, and every p'tt thereof in my owne proper right, and that I have in myselfe full power, good right, and lawfull authority to grant, sell, convey and assure the same unto the s'd John Gill, his heirs, ex'ors, adm'rs and assigns, as a good, perfect, and absolute estate of inheritance in fee simple, without any condi'n, reserv'n or limita'ion whatsoever, so as to alter, change, defeat, or make void the same, and that the s'd John Gill, his heirs, executors, administrators and assigns, shall and may, by force and virtue of these presents, from tyme to tyme, and at all tymes forever hereafter, lawfully, peaceably, and quietly have, hold, use, occupie, possess and injoy the above granted premises, with the appurtenances, without any lawfull let, sute, troble, denyall, interruption or disturbance of me, the s'd Richard Gridley, my heirs, ex'ors, adm'rs, or assigns, or of any other person or persons, whatsoever, lawfully clayming by, from, or under us, or any of us, or by our, or any of our means, act, consent, title, privity, or procurement; and I, the said Richard Gridley, for me, my heirs, executors, and administrators, and every of us, do further covenant, promiss, and grant, by these presents, that the s'd parcell of land, with all the rights, priviledges, members, and appurtenances, are free and cleare, and freely, cleerely acquitted, exonerated and discharged of and from all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, joyntures, dowers, titles of dower, judgments, executions, entayles, forfeitures, and of and from all other titles, trobles, charges and incumbrances whatsoever, and Grace, the wife of mee, the said Richard Gridley, doth by these presents freely, fully, and absolutely give, yield up and surrender all her right, title, dower and interest which she had, hath, might or should have had of, in and to the above mentioned premises, or any part thereof, unto the said John Gill, his heirs, executors, administrators and assigns, forever; and I, the said Richard Gridley, and Grace, my wife, shall and will be reddy and willing at all tymes to give, and will give unto the said John Gill, his heirs, executors, administrators and assigns, such further and ample assurance of all the aforebargained premises as in law or equity can be desired or required. In witness whereof we, the said Richard and Grace Gridley, have hereunto set our hands and seals the eleventh day of March, in the year of our

Lord, according to the computation of the Church of England, one thousand six hundred seventy and two, Annoy Regin Reqie Car. Secundi x x v.

RICHARD R. GRIDLEY, his mark and seale apend't. The mark of P. GRACE GRIDLEY, and a seale apend't.

Signed, sealed, and delivered by Richard Gridley in the presence of us, John Bull, William Pitman, William Pinkney, John Hayward, Sen.

The within mentioned land was staked out and possession by turf and twig given to the said John Gill by the said Richard Gridley, this 6 of Decem'r, 1673, in presence of us, Elisha Hutchinson, Thomas Bligh, Robt. R. C. Carver, his marke. This deed was acknowledged by Richard Gridley, and Grace, his wife, Dec'r 6, 1673, before me, Edward Tyng, asst. Recorded and compared 30th 1 mo., 74 *p'r ffru* Grace Bendall, Record'r.

A true copy from Suffolk Records of Deeds, Lib. 8, fo. 352.

Attest: HENRY ALLEINE,
Reg.

5. *John Gill's Liberty to Wharf.*

May ye 2d, 1674.

Libertie is granted to Thomas Peck to wharfe, upon the flatts before his own land near Richard Gridlies, fortie-five foote in breadth, according to his upland, and is now staked out. Also to Robert Carver to wharf sixtie foote in breadth according to his land above the flats adjoining to Thomas Pecke, now also staked out; and whereas, upon the 31st of March, 1673, libertie was granted to Richard Gridlie to wharfe before his land; and upon the second of March, 167$\frac{4}{5}$, a prohibition thereof was ordered for staking it out beyond his bounds; it is now ordered that John Gill, of Dorchester (to whom the said Gridley hath sould the privilege of the said flats), shall have libertie to wharfe fortie feet in breadth, before ye said Gridlie's land, next to Robert Carver's as it is now staked out, and is twentie-eight foote northward from a great rock lying upon the flatts before the high-way.

A true copy of records of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

6. *John Gill's Will.*

In the name of God, amen, the eighth day of October, Anno Domini one thousand six hundred seventy & eight, I, John Gill, of Boston, in the Colony of the Massachusetts, in New England, yeoman, being weak and infirm of body, but of sound and perfect memory, praised to Almighty God for the same, knowing the uncertainty of this present life, and being desirous to settle that outward estate the Lord hath lent me, do make and ordain this my

last will and testament in manner and form following (that is to say), first and principally, I commend my soul into the hands of Almighty God, my Creator, hoping to receive full pardon and remission of all my sins, and salvation through the alone merits of Jesus Christ my Redeemer, and my body to the earth to be buried in such decent manner as to my executrix hereafter named shall be thought meet and convenient; and as touching such worldly estate as the Lord hath lent me, my will and meaning is, the same shall be employed and bestowed as hereafter in and by this my will is express't. Imp'o: I do hereby revoke, renounce, and make void all wills by me formerly made, and declare and appoint this my last will and testament. Item: I will, that all the debts that I justly owe to any manner of person or persons whatsoever, shall be well and truly paid, or ordained to be paid, in convenient time after my decease by my executrix hereafter named. Item: I give and bequeath unto my loving daughter, Rebecca Belcher, wife of Joseph Belcher, the sum of five pounds p'r ann'm, to be paid unto her by my executrix hereafter named, during the natural life of my said daughter, provided it appear to my overseers hereafter named, that she hath real need of the same for buying her apparel and other necessaries. Item: I give and bequeath unto my said daughter Rebecca, and to the children of her body lawfully begotten, and to their heirs and assigns forever, all the housing and land that is now in the tenure and occupation of my son-in-law, Joseph Belcher, or his assigns, and my will is that the said housing and land hereby bequeathed to my said daughter shall remain in the hands and under the management of my overseers hereafter named, for the use of my said daughter and her children during the term of the natural life of my son-in-law Joseph Belcher. Item: my will is that, in case my said daughter Rebecca survive her husband, the said Joseph Belcher, and after his decease she stand in need of more for her necessary maintainance, than the annual income of the estate hereby bequeathed to her, then she shall have and hereby have and hereby hath liberty to sell any part of the said housing or land hereby given her, for her necessary supply. Item: I give and bequeath unto my dear and well beloved wife, Anna Gill, the use, benefit, and improvement of the full remainder of my real and personal estate whatsoever it is or wheresoever it may be found, during the term of her widowhood. Item: I give and bequeath all that estate hereby given and bequeathed unto my said wife during her widowhood, unto my grandchild, Joseph Belcher (who now liveth with me), and to the heirs of his body lawfully begotten, and to their heirs forever, and for default of such issue then my will is that the same shall be equally divided amongst the children of my said daughter Belcher, to be and remain to them and their heirs forever; provided always that my said grandchild, Joseph Belcher, pay or cause to be paid unto each of the children that are now living of my said daughter Rebecca, the sum of twenty pounds ster. in cattle, provisions, or in-

come of the estate, as they come of age. Item: my will is that, if either or any of the said six children die before they attain the age of twenty-one years, or day of marriage, that then the twenty pounds hereby bequeathed to such child or children shall be equally divided between the survivors of them. Item: my will is that my said wife, Anna Gill, shall keep and maintain my said grandchild at school until he attain the age of fourteen years, and that then he shall be put an apprentice unto some good trade, such as he shall desire, by advice and consent of my overseers hereafter named. Item: my will is that, in case my said wife shall see meet to marry again, that then she shall have only the use, benefit, and improvement of one half part of the said remainder of my estate during her life, and that she then give unto my overseers hereafter named, good and sufficient security to keep the housing, fencing, and wharfing that belongs to that half part of my estate that she is to enjoy, in good repair during her lifetime, and to return all the said half part of my said estate to my said grandchild or others hereby interested therein, in good repair and without trouble at her decease; and that on the day of my said wife's marriage my overseers hereafter named shall take into their hands the other half part of the said remainder of my said estate, to be improved by them for the use of my said grandson, Joseph Belcher, until he attain the age of twenty-one years; also my will is that in case my said wife shall, during her widowhood, stand in need of a further supply than the income of the said estate, that then she shall have and hereby hath liberty to sell so much of that part of my estate that she is to have the use of, as is needful for her comfortable supply. Item: I do hereby nominate, constitute, and appoint my dear wife the sole executrix of this my last will and testament. Item: I do hereby nominate and appoint my loving friends, Mr. Thomas Mighell, of Milton, Deacon Jacob Elliot, of Boston, and my brother Roger Billing, of Dorchester, the overseers of this my last will, hereby desiring them to use their utmost care and endeavor that this my will be punctually observed and performed, and also that my said overseers shall be fully paid for what trouble they be at, and what time they spend in the concerns of my estate, and that if any one of my overseers die then the other two to choose another in their room, who is hereby invested with the like power as one of my said overseers, and so from time to time as need shall require. In witness whereof, I, the said John Gill, have hereunto set my hand and seal the day and year first above written.

his
JOHN GILL + and a seal.
mark.

Signed, sealed, and what is contained in these three pages was published by the above named John Gill, as his last will and testament, in the presence of us.

JOSEPH HOLMES, JOHN BULL, JOHN HAYWARD, Sr.

Joseph Holmes and John Hayward made oath in Court, 7 Feb'y 1678, that they was present and did see John Gill sign and seal, and heard him publish this instrument to be his last will, and that when he so did he was of a disposing mind, to their best understanding.

Attest: JOS. ADDINGTON,
Clerk.

A true copy.

(Attest) OLIVER W. B. PEABODY,
Reg.

7. *Staking out way by Selectmen*, 1683.

October 31st, 1683.

The Selectmen all mett this day. Staked out a highway for the town's use on the southerlie side of ye land belonging to the late John Gill, deceased, being thirtie ffoote in breadth from the lower corner of said Gill's wharfe, next the sea. Also, the same day staked out another highway for the town's use, on ye easterlie side of the proprietors' lands, w'ch lyeth between the above said highway and ye way that leads from Deacon Henry Allen's to ye windmill, w'ch way is in breadth from the proprietors' lands ffiftie ffoote towards the sea shore. The fflatts and land between this said highway into the sea is granted to the proprietors of ye lands w'ch are abuttors on the s'd way in an equall proportion to their severall fronts on s'd way. Always provided the said proprietors and abuttors maintain in good repairs the said way at their proper cost and charge.

It is also ordered y't ye owners or proprietors of ye lands (above mentioned) latelie belonging to John Gill, deceased, do remove the ffence w'ch now stands in ye highwaye, and that it be done within six months, on the penaltie of twentie shillings per week, for every week's default.

A true copy from the records of the Town of Boston.

(Attest) S. F. McCLEARY,
City Clerk.

8. *Belcher to Dorby.*

To all People unto whom this present deed of sale shall come: Joseph Belcher, of Dedham, in the county of Suffolk, within the Province of the Massachusetts Bay, in New England, Clerke, sendeth greeting: Know ye that I, the s'd Joseph Belcher, for and in consideration of the sum of one hundred and seventy pounds, curr^{t} money of New England, to me in hand well and truly paid at and before the ensealing and delivery of these presents by Eleazer Dorby, of Boston, in the county of Suffolk, and Province aforesaid, marriner, the receipt whereof to full content and satisfaction, I doe

hereby acknowledge, and thereof and of every part and parcel thereof, doe acquitt, exonerate, and discharge the s'd Eleazer Dorby, his heirs, ex'ors, admin's, and assigns, and every of them forever by these presents: as also for divers other good causes and considerations me hereunto moving, I, the said Joseph Belcher, have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents, for myself and my heirs doe fully, freely, clearly and absolutely give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Eleazer Dorby, his heirs and assigns forever, all that my messuage or tenement, with all the land and ground whereon the same doth stand, and is thereunto belonging and adjoining, and the wharfe, beach, and flatts that lyeth before the same to the seaward, below the cartway, which runneth between s'd land and wharfe, along to the housing and land of John Adams, mauleter, scituate, lying and being at the southerly end of the town of Boston, afores[d] (heretofore the inheritance of my grandfather, John Gill, late of Boston, aforesaid, yeoman, dec'd, and by him left unto me, and by his last will and testament), and is butted and bounded on the westerly end by land of the late James Flood, dec'd, on the southerly side of the town highway, leading down to the water-side; on the easterly end by the sea or salt water, and on the northerly side by the land, beach, and flatts of the s'd John Adams, (heretofore appertaining to one Robert Carver, since deceased,) or however otherwise bounded or reputed to be bounded, measuring in breadth, at the westerly end, sixty-one feet eight inches or thereabout, and from the said Flood's land, to extend by the town's street or highway, down to the afores'd cartway, forty foot, and in breadth upon the s'd cartway, to the land of the said Adams, sixty-one foot eight inches or thereabout, and from thence to extend in length up from the land of the said Adams, to the land of the said Flood, fourty-four foot and an half, and the said wharfe, beach, and flatts is to extend in length from the lower part of the said cartway eastward, down to low-water mark, where it is to measure in breadth fifty-two feet or thereabout, excepting only, and it is hereby reserved out of this present grant the aforesaid cartway for the use of the s'd John Adams' house, together with all and singular the houses, edifices, buildings and fences standing thereon, yard, garden, well, water, watercourses, profitts, priviledges, rights, commoditys, heraditam'ts, emolum'ts, and appur's whatsoever to the said messuage or tenement, land, wharfe, and premises belonging or in any wise appertaining, or therewith now or heretofore used, occupied, or enjoyed, accepted, reputed, taken or known as part, parcel or member thereof, or of any part thereof, and the reversion and reversions, remainder and remainders thereof; and also all the estate, right, title, interest, inheritance, use, possession, property, claim and demand whatsoever of me, the said Joseph Belcher, and my heirs, of, in and to the same and every part thereof, with all

deeds, writings, and evidences relating thereto: To have and to hold all the above and before mentioned granted and bargained premises, with the appur's, and every part and parcel thereof, unto the said Eleazer Dorby, his heirs and assigns forever, to his and their own sole and proper use, benefitt, and behoofe, from henceforth and forevermore, absolutely, without any manner of condition, redemption, or revocation in any wise. And I, the said Joseph Belcher, for me, my heirs, ex'ors, and adm'rs do hereby covenant, promise, grant and agree to and with the said Eliezer Dorby, his heirs and assigns, in manner and form following, that is to say, that I, the s'd Joseph Belcher, at the time of the ensealing, and untill the delivery of these presents, am true, sole, and lawful owner of all the aforebargained premises, and stand lawfully seized thereof in my own proper right, of a good, sure, and indefeasible estate of inheritance, in fee simple, without any manner of condition, reversion or limitation of use or uses whatsoever, so as to alter, change, defeat or make void the same, having in myselfe full power good right, and lawful authority to grant, sell convey and assure the premises unto the said Eleazer Dorby, his heirs and assigns, in manner and form aforesaid, and according to the true intent and meaning of these presents, and that the said Eleazer Dorby, his heirs and assigns, shall and may by force and virtue of these presents, from henceforth and forever hereafter, lawfully, peaceably, and quietly have, hold, use, occupy, possess, and enjoy the above granted and bargained premises, with the appur's, free and clear, and clearly acquitted, exonerated and discharged of and from all and all manner of former and other gifts, grants, bargains, sales, leases, releases, mortgages, jointures, dowers, judgments, executions, entails, fines, forfeitures, seizures, anemiaments, and of and from all other titles, troubles, charges, and incumbrances whatsoever. And further, that I, the said Joseph Belcher, for myself, my heirs, ex'ors and adm's, and every of them, doe hereby covenant and grant to warrant and defend all the above granted and bargained premises, with the apper's, and every part and parcel thereof, unto the said Eleazer Dorby, his heirs and assigns forever, against the lawful claims and demands of all and every person and persons whomsoever, and at any time or times hereafter, on reasonable request or demand of the s'd Eliezer Dorby, his heirs or assigns, to give and pass unto him and them forever (all his and their proper costs) such further and ample assurance and confirmation of the premises, as in law or equity can or may be reasonably devised, advised or required. In witness whereof, I, the said Joseph Belcher, and Abigail my present wife (in testimony of her free consent to these presents, and full relinquishment of all her dower and power of thirds of, in and to the above granted premises), have hereunto set our hands and seals, the twenty-ninth day of August, Anno Domini one thousand seven hundred, and in the twelfth year of

the reign of our Sovereign Lord King William the Third, over England, &c.

JOSEPH BELCHER, and a seal.
ABIGAIL BELCHER, & a seal.

Signed, sealed and delivered in presence of us.
JOHN ADAMS.
ELIEZER MOODY, Sr.
DANIEL OLIVER.

Received the day and year first within written, of the within named Eleazer Dorby, the sum of one hundred and seventy pounds, curr't money of New England, in full payment, satisfaction, and discharge of the purchase consideration within expressed, per Joseph Belcher.

SUFFOLK, ss. BOSTON, August 29, 1700.

The within named Joseph Belcher, and Abigail his wife, personally appearing before me, the subscriber, one of his Majesty's Justices of the Peace for the county aforesaid, acknowledged this instrument of bargain and sale to be their act and deed.

JER. DUMER.

July 8, 1704.

Received & accordingly ent'd and examined.
Per ADDINGTON DAVENPORT,
Reg'r.

A true copy from Suffolk Records of Deed, Lib. 21, fo. 616.
Attest: HENRY ALLINE,
Reg.

9. *Dorby's Division.*

[L. S.] SUFFOLK, SS:

By the Hon'able Josiah Willard, Esquire, Judge of Probate, &c. To Messrs. Stephen Bontineau, Edward Gray, Jacob Sheafe, Colo. John Hill, and Thomas Foster, all of Boston, in the County of Suffolk, and sufficient freeholders, Greeting:

Pursuant to the power and authority to me granted in and by an act of the General Assembly of this Province, I do hereby nominate and empower you (or any three of you) to make a just and equal division or partition of the estate in housing and land, whereof Eleazer Dorby, late of Boston, aforesaid, mariner, deceased, dyed seized and possessed, to and among his three surviving children, namely, Eleazer, Benjamin and Mehitabel, that is to say: a double portion thereof to the said Eleazer, the oldest son, and the remain-

der thereof to the said Benjamin and Mehitable, equally, pursuant to the dec'd's last will, first setting off to his said son Eleazer the sum of one hundred ninety-three pounds thirteen shillings and five pence, old tenor, being so much by him paid as executor more than the said deceased's personal estate amounted to, according to your best skill and judgment (to which you have been sworn before me), and you are to make return thereon, with your doings therein, unto myself, at the Register's office, so soon as may be.

Given under my hand and the seal of the said Court of Probate, at Boston, this eleventh day of September, Anno Domini 1744.

J. WILLARD.

We, the subscribers, being appointed by the Hon'ble Josiah Willard, Esq., Judge of Probate for the county of Suffolk, &c., to make a division or partition of the real estate of Eleazer Dorby, late of Boston, in the county of Suffolk and Province of the Massachusetts Bay, in New England, mariner, deceased, whereof he died seized and possessed, to and among his three surviving children, namely, Eleazer, Benjamin and Mehitabel:

In pursuance to said order, we have viewed said land and divided the same as follows, viz:—

Impr's. We have set off to Eleazer Dorby, the eldest son of the dec'd, aforesaid, in consideration of one hundred ninety-three pounds thirteen shillings and five pence, old tenor, being so much by him paid as executor, more than the said deceased personal estate amounted to, as also for his double share, part or portion in the said estate, the house and land, wharf and flatts, and all the privileges and appurtenances thereunto belonging, now in the possession of the widow Smith, as it is now butted and bounded, now called or named the Bull House and Wharf. Also one piece of land bounded easterly on the highway thirty-eight feet; southerly by the land late the estate of Jonathan Simpson, deceased, one hundred and sixty feet; westerly by the land of the Rev. Mr. Samuel Cheekley, twenty-five feet, and northerly by the land hereafter to be set off to Benjamin, the other son of said Dorby, as per the plan hereto annexed will plainly appear.

2*dly.* We set off to Benjamin Dorby, the other son of said Eleazer Dorby, dec'd, as his part or portion in said estate, the house and land now in the occupation or possession of his said brother, Eleazer Dorby, butted and bounded as follows: Easterly by the aforesaid highway, thirty-four feet three inches; southerly by the aforesaid land set off to said Eleazer Dorby; westerly by the aforesaid land of said Samuel Cheekley, thirty-three feet six inches; northerly by the land to be set off to said Mehitable, as the plan thereof will fully show; also the southerly part of the land and wharf below the aforesaid highway, being butted westerly on said way about fifty feet, more or less, with all the flatts and privileges thereunto belonging.

And whereas the housing, land and wharff being by estimation valued at two hundred pounds, old tenor, more than is hereafter to be sett off to Mehitabel, daughter of Eleazer Darby, aforesaid, deceased, we order and appoint the said Benjamin Darby to pay to his sister Mehitable Darby, within one month from the date hereof, the sum of one hundred pounds in bills aforesaid.

3dly. We set off to Mehitabel Darby, the daughter of said Eleazer Darby, deceased, as her part or portion of her said father's estate, the house and land now in the occupation or possession of said Benjamin Darby, butted and bounded as follows, viz: Easterly on the aforesaid highway, twenty-eight feet two inches; southerly by the land set off to Benjamin Darby, aforesaid; Westerly at the *the* road, partly by said Cheekley and Col. John Hill's land, thirty-nine feet, and northerly by the land of Barthol'w Sears, one hundred twenty-seven feet, as per the plan hereunto annexed will more fully appear; which sum of one hundred pounds, old tenor, which she is to receive of her said brother Benjamin, is in full of her share or portion in said estate.

In witness whereof we have hereunto set our hands and seals the sixth day of October, Anno Dom. 1744.

STEPHEN BARTINEAU & a seal.
EDW. GRAY & a seal.
JACOB SHEAFE & a seal.
JOHN HILL & a seal.
THOS. FOSTER & a seal.

Signed, sealed, and delivered in presence of us,
ESTES HATCH,
JOHN OVERING.

SUFFOLK, ss:

By the Hon'ble Josiah Willard, Esq., Judge of Probate, &c., the within written being presented to me by the subscribers as a division or partition of the real estate of Eleazer Darby, dec'd, I do allow and approve thereof accordingly.

J. WILLARD.

Boston, Nov'r 1, 1744.

Examined. Pr. A. BELCHER,
Reg'r.

A true copy of Record.
Attest: H. M. WILLIS,
Reg.

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10. *Partition of Robbins.*

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

To Thomas Dawes, Esq., and Messrs. John Tiliston and Richard Green, all of Boston, in the county of Suffolk, and all free-holders in the same county, greeting. [L. S.]

Whereas, Jonathan Dorby Robins, Mary Wallack (wife of Moses Wallack), and Ann Bradlee (wife of David W. Bradlee), all of Boston, in the county of Suffolk, did petition the Supreme Judicial Court, held at Boston within and for the county of Suffolk, on the second Tuesday of August last, showing that Mary Robins, mother of the said Jonathan, Mary, and Ann, was seized of the estate hereafter mentioned, in fee, and died so seized thereof, at said Boston, in the year 1770, leaving her husband and their father, Robert Robins, of said Boston, mariner, to hold the same as tenant by the courtesy; and also leaving said petitioners, together with their brother, Richard Robins, since deceased, the only heirs at law; the said Richard having died in or about the year 1780, in his minority, his part or share therein descended to his father, the said Robert Robins, who has lately deceased, by means of all which the said Jonathan Dorby Robins is now entitled to seven-fifteenth parts of said estate, and the said Mary Wallack and Ann Bradlee to four-fifteenth parts each—the same estate being as follows, to wit: a certain tenement, situate at Boston aforesaid, in Summer street, commonly called the Bull house; also a certain wharf and flatts with stones thereon, commonly called Bull's wharf; also a certain piece of wharf land or flatts near the same, measuring about fifty feet on Sea street; also a certain small tenement, with the land thereto belonging, now occupied by said Jonathan Dorby Robins, bounded easterly in front on said sea Street; also a certain other piece of land adjoining the late dwelling-house of said Robert Robins, bounding easterly in front on said Sea street: also said petitioners by their said petition further showing that as children and devisees named in the will of said Robert Robins, deceased, they are seized in fee each of one undivided third part of and in the following real estate of which said Robert Robins died seized, to wit: a certain dwelling-house and land lately occupied by said Robert, bounded easterly in front on said Sea street; also of a certain piece of wharf land and flats lying near thereto, bounded westerly on the same street, there measuring about fifty feet, the last mentioned premises being subject to the widow's dower, as will appear by the records of the Probate Court, all which premises those first mentioned, and also those last mentioned, said petitioners are desirous should be divided by one common report and partition; and therefore prayed that partition might be made of the several afore described estates, and that the shares of said petitioners might be set

off and divided from each other so that each might hold their respective shares thereof in severalty. Agreeably thereto the same Supreme Judicial Court did grant the prayer of said petitioners, and thereupon appointed you, the said Thomas Dawes, Esq., and Messrs. John Tileston and Richard Green to perform the said service. This is therefore to empower you (after you have been duly sworn for that purpose, and given due notice to all persons concerned and interested therein to be present if they see cause) to make partition of the afore described premises, according to law, by assigning to them, the said petitioners, their respective shares and proportions thereof, by meets and bounds to hold to them in severalty, and having thus done you are to make return of the partition by you so made under your hands to the Supreme Judicial Court, together with this warrant, as soon as may be, to the end the same partition may be accepted and recorded as the law directs. Given under the seal of said Court. Witness Francis Dana, Esq., Chief Justice of our said Supreme Judicial Court at Boston, the second day of September, in the year of our Lord one thousand eight hundred and one.

Att.: CHARLES CUSHING,
Cler.

SUFFOLK, ss:

BOSTON, Feb'y 8th, 1802.

Then the afore named Mr. Richard Green personally appeared and made solemn oath that he would faithfully and impartially, and according to his best skill and judgment, execute and perform the service assigned to him by the afore written warrant, before me.

CHA'S CUSHING,
Just. of Peace.

SUFFOLK, ss:

BOSTON, Feb'y 9th, 1802.

Then the afore named Thomas Dawes, Esq. and Mr. John Tileston personally appeared and made solemn oath that they would faithfully and impartially and according to their best skill and judgment execute and perform the service assigned to them by the afore written warrant, before me.

CHA'S CUSHING,
Just. of Peace.

We, the subscribers, being appointed by the Honorable the Justices of the Supreme Judicial Court to make a division or partition of the real estate of Mary Robins and Robert Robins, deceased, among their surviving children, Jonathan Dorby Robins, Mary Wallack, wife of Moses Wallack, and Ann Bradlee, wife of David W. Bradlee, agreeably to their petition to the said Justices of the

Supreme Judicial Court, as will more fully appear by their warrant to us, herewith annexed, for the said purpose, dated the 2d September, 1801, and after being duly sworn, notifying and hearing the parties, and viewing the premises therein described, do, according to our best skill and judgment, assign, allot, and set off to the said Jonathan Dorby Robins a tenement and land situate at Boston, in Summer street, commonly called the Bull house, butting southerly on Summer street forty feet; northerly on land of Samuel Adams, Esq., forty-two feet six inches; westerly on the land of the widow Miller, sixty-one feet eight inches; easterly on a cartway of fifteen feet wide, sixty-one feet eight inches. Also a certain wharf and flats, with the stores thereon, commonly called Bull's Wharf, butting westerly on the aforesaid cartway (of fifteen feet wide) sixty-one feet eight inches; easterly on the sea, fifty-two feet; southerly on the townsway, six hundred and eighty feet; northerly on John Tileston, six hundred and eighty feet, all which will be in full of the said Jonathan Dorby Robins, seven fifteenth parts of all and singular the said real estate, of which his said mother, Mary Robins, died seized; and in full for said Jonathan Dorby Robins' third part of all the said real estate of which his father, the said Robert Robins, died seized, as set forth in said warrant, we assign, allot, and set off to Mary Wallack the said house and land lately owned and occupied by the said Robert Robins, and the said other piece of land adjoining the same house on the southerly side, the whole bounded as follows, to wit: Easterly on Sea street, seventy-two feet three inches; westerly on the land of the widow Freeman, Stephen Higginson, Jun'r, and others, fifty-eight feet six inches; northerly on the house and land now occupied by Jonathan Dorby Robins, as the fence now stands, and southerly on lands of Richard Hunnewell, one hundred and sixty feet, being subject to the widow's dower as assigned to her according to the Probate Records, meaning that at the decease of the said widow, that part of the said house and land and appurtenances set off to said widow shall belong to said Mary Wallack and her heirs and assigns. The above estate so allotted and assigned to said Mary Wallack, together with two hundred dollars, to be paid to her by Anne Bradlee, as herein set forth, is in full of her four-fifteenth parts of the above described estate late belonging to her said mother, Mary Robins, and also in full of her third part of the above described estate late belonging to her said father, Robert Robins, as set forth in said warrant. We assign, allot, and set off to Anne Bradlee, the dwelling-house and land now occupied by Jonathan Dorby Robins, butting easterly on Sea street, twenty-eight feet two inches; westerly on land of the widow Freeman, Stephen Higginson, Jun'r, and others, thirty-nine feet; northerly on Thomas Clemens, one hundred and thirty-seven feet; southerly on land before set off to Mary Wallack, as the fences now stand, and also s'd two certain pieces of wharf and flats lying nearly before the same, the whole measuring in said Sea street, westerly one hun-

and Thomas, their heirs and assigns, to their use and behoof forever. And I, the said Jonathan D. Robins, for myself and my heirs, executors and administrators, do covenant with the said John, Thomas N. and Thomas, their heirs and assigns, that I am lawfully seized in fee of the above granted premises, that they are free from all incumbrances, excepting what may have been done, caused or occasioned by the said City of Boston.

That I have good right to sell and convey the same to the said John, Thomas N. and Thomas as aforesaid; and that I will, and my heirs, executors, and administrators, shall warrant and defend the same to the said John, Thomas N. and Thomas, their heirs and assigns forever, against the lawful claims and demands of all persons. In witness whereof, I, the said Jonathan Dorby Robins, widower, have hereunto set my hand and seal this twenty-ninth day of July, in the year of our Lord eighteen hundred and thirty-five.

J. D. ROBINS. [L. S.]

Signed, sealed, and delivered in presence of us.

RICH'D ROBINS,
ELIZA C. ROBINS.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

July 30th, A. D. 1835.

Then personally appeared the above named Jonathan D. Robins, and acknowledged the foregoing instrument to be his free act and deed. Before me.

RICH'D ROBINS,
Justice of the Peace.

BOSTON, July 30, 1835.

Received and entered with Suffolk Deeds, Lib. 394, fol. 73.

By HENRY ALLINE,
Reg.

RHODE ISLAND DISTRICT, ss:

CLERK'S OFFICE, CIRCUIT COURT AT PROVIDENCE, September 12, 1853.

I, John T. Pitman, Clerk of the said Court for said District, do hereby certify that the above and foregoing two pages contain a true copy of the original deed, filed of record in the case Thomas Richardson *vs.* The City of Boston, disposed of at the June term, A. D. 1853.

And I further certify that said original deed was upon motion to

the Court delivered to the plaintiff in said case; this copy being left.

In testimony whereof I have hereunto set my hand and [L. S.] the seal of said Circuit Court, on the day and year above written.

JOHN T. PITMAN,
Clerk.

12. *J. French to Richardson.*

Know all men by these presents, that I, John French, of the city of Boston, merchant, in the Commonwealth of Massachusetts, in consideration of six thousand two hundred dollars, to me paid by Thomas Richardson, of the city of Boston, and State aforesaid, iron founder, the receipt whereof is hereby acknowledged, do by these presents, grant, remise, release, and forever quit claim unto the said Richardson, heirs and assigns all my right, title, interest and claim in and to a certain wharf, estate, and flats conveyed to me by Isaac P. Osgood, guardian, by deed bearing date fifth day of June, Anno Domini eighteen hundred and thirty-five, and recorded in Suffolk Records, Lib. 392, fol. 84, and described as follows: "A certain lot of land situate on Sea street, in said Boston, and bounded as follows, to wit: Northerly on the south side of Summer street and the town dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and by the south side of Summer street, to the channel; there bounded on the north by Sea street, from the aforesaid corner to the land of David W. Bradlee, and Ann, his wife; there bounded southerly by said land of said Bradlee and Ann his wife, in her right, and extending from Sea street out to the channel, and there bounded easterly by the channel, or however otherwise the same is bounded; also all my right, title, interest and claim in and to a certain other wharf and flats conveyed by deed of J. D. Robins, dated the twentieth day of July, A. D. 1835, and recorded in Suffolk Deeds, Lib. 394, fol. 73, and described as follows: "A certain wharf and flats lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded westerly or northwesterly on Broad street, there measuring sixty-two feet three inches or thereabouts, northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less, easterly or southeasterly on low water mark; there measuring fifty-two feet or thereabouts, southerly or southwesterly on the town way or dock; there measuring six hundred and sixty feet more or less, or however otherwise the same may be bounded and described, with all other right, interest, and easements in said deed: to have and to hold the above described premises to him, the said Richardson, his heirs and assigns, to his use and behoof forever; and I do covenant for myself, heirs, executors, and administrators, to and with said

Richardson, his heirs and assigns, that I will, and my heirs shall warrant and defend the said premises unto said Richardson, his heirs and assigns, against the lawful claims of all persons claiming by, through, or under me, but not otherwise.

And for the consideration aforesaid, and for divers other good and valuable considerations, do hereby release and quit claim unto the said heirs and assigns, all my right, claim, or possibility of dower, in or out of the afore described premises. In witness whereof, I, the said John French, have hereunto set my hand and seal this eighth day of June, in the year of our Lord eighteen hundred and thirty-six.

JOHN FRENCH. [L. S.]

Signed, sealed, and delivered in presence of us.

W. STEVENSON,
ALBERT W. MUNROE.

NORFOLK, ss:

BOSTON, June 15, A. D. 1836.

Then personally appeared the above named John French, and acknowledged the foregoing instrument to be his free act and deed. Before me.

WILLIAM STEVENSON,
Justice of the Peace.

BOSTON, October 27, 1836.

Received and entered with Suffolk Deeds, Lib. 411, fol. 290.

By HENRY ALLINE,
Reg.

RHODE ISLAND DISTRICT, ss:

CLERK'S OFFICE, CIRCUIT COURT AT PROVIDENCE, September 12, 1853.

I, John Pitman, Clerk of said Court for said District, do hereby certify that the above and foregoing two pages contain a true copy of the original deed, filed of record in the case Thomas Richardson *vs.* The City of Boston, disposed of at the June term, A. D. 1853.

And I further certify that said original deed was upon motion to the Court delivered to the plaintiff in said case; this copy being left.

[L. S.] In testimony whereof I have hereunto set my hand and the seal of said Circuit Court on the day and year before written.

JOHN T. PITMAN,
Clerk.

13. *T. N. French to Alger.*

Know all men by these presents, that I, Thomas N. French, of the city of Boston, merchant, in consideration of twenty-six hundred dollars, to me paid by Cyrus Alger, of said city, iron founder, the receipt whereof is hereby acknowledged, do by these presents give, grant, bargain, sell, and convey unto the said Cyrus Alger, his heirs and assigns, one undivided third part of a certain wharf and flats lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded and described as follows, viz.: westerly or northwesterly on Broad street, there measuring sixty-two feet three inches or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly and southeasterly on low water mark, there measuring fifty-two feet, or thereabouts; southerly or southwesterly on the town way or dock, there measuring six hundred and sixty feet, more or less, as described in Deed of J. D. Robins, recorded in Suffolk Deeds, Lib. 394, fol. 73, subject to all the right and lien of a certain mortgage on said estate made to said Jonathan D. Robbins, as reference of the record will show: To have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said Cyrus Alger, heirs, and assigns, to his and their use and behoof forever. And I, the said Thomas N. French, for myself and my heirs, executors and administrators, do covenant with the said Cyrus Alger, heirs and assigns, that I'm lawfully seized in fee of the aforegranted premises, that they are free from all incumbrances, except said mortgage to said Jonathan D. Robbins; that I have good right to sell and convey the same to the said Cyrus Alger as aforesaid, and that I will, and my heirs, executors and administrators, will warrant and defend the same to the said Alger, and his heirs and assigns, forever, against the lawful claims and demands of all persons. In witness whereof, I, the said Thomas N. French, have hereunto set my hand and seal this twenty-seventh day of October, in the year of our Lord eighteen hundred and thirty-six.

THOMAS N. FRENCH and a seal.

Signed, sealed and delivered in presence of
TH. RICHARDSON.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.
October 27, A. D. 1836.

Then personally appeared the within named Thomas N. French, and acknowledged the foregoing instrument to be his free act and deed.

Before me, HUGH MONTGOMERY,
Justice of the Peace.

October 28, 1836, *at eight o'clock A. M.*

Received, entered and examined.

P'r HENRY ALLINE,
Reg.

A true copy from the Records of Deeds for the County of Suffolk, Lib. 412, fol. 42.

(Attest) HENRY ALLINE,
Reg.

14. *Alger to Richardson. Quit-claim Deed.*

Know all men by these presents, That I, Cyrus Alger, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, Iron Founder, in consideration of the sum of one dollar, to me paid by Thomas Richardson, of said Boston, gentleman, the receipt whereof is hereby acknowledged, do hereby grant, remise, release and forever quit-claim unto the said Thomas Richardson, his heirs and assigns, forever, all my right, title and interest, both at law and in equity, in, to and unto a certain wharf and flatts, lying at the foot of Summer street, in said Boston, commonly called Bull's Wharf, and bounded and described as follows, namely: Westerly and northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts; northerly or north-easterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or south-easterly on low water mark, there measuring fifty-two feet, or thereabouts; southerly or south-westerly on other land of said Thomas Richardson, there measuring six hundred and sixty feet, more or less, or however otherwise the same may be bounded and described, with all the right, title and interest I may have in the soil at the upper end of said wharf over which said Broad street passes, and for the consideration aforesaid, I hereby grant, remise, release, and forever quit-claim unto the said Thomas Richardson, his heirs and assigns, forever, all my right, title and interest and estate, both at law and in equity, not only in, to and unto the wharf and flatts aforesaid (as hereinafore granted), but also in, to and unto every and all extensions of said wharf and flats which heretofore have been, or hereafter may be acquired, under and by virtue of any acts or act, or grants or grant of the Legislature of the *the* Commonwealth aforesaid, or otherwise, together with all rights of dockage, wharfage, ways, easements, rights, privileges, emoluments, and appurtenances, to said wharf and flats, and every and all extensions thereof already made, or hereafter to be made, appertaining and belonging: To have and to hold the above granted premises, with all the privileges and appurtenances to the same belonging, to the said Thomas Richardson, his heirs and assigns, to his and their use and behoof forever: And I, the said Cyrus Alger, for myself, and my heirs, executors,

and administrators, do covenant with the said Thomas Richardson, his heirs and assigns, that the premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said Thomas Richardson, his heirs and assigns, forever, against the lawful claims and demands of all persons claiming by, through or under me, but against none other.

In witness whereof, we, the said Cyrus Alger and Mary Otis, wife of said Cyrus, in token of her release of all right and title of or to dower in the granted premises, have hereunto set our hands and seals, this tenth day of February, in the year of our Lord eighteen hundred and forty-eight.

CYRUS ALGER. [L. S.]
MARY OTIS ALGER. [L. S.]

Signed, sealed and delivered in presence of (the word "wharf" being first interlined and the word "equity" being first erased on first page),
H. MONTGOMERY,
SAM'L B. DEAN.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.
February 16, 1848.

Then personally appeared the within named Cyrus Alger, and acknowledged the within instrument to be his free act and deed.
Before me, H. MONTGOMERY,
Justice of the Peace.

BOSTON, March 31, 1851.
Received and entered with Suffolk Deeds, Lib. 618, fol. 219.
P'r HENRY ALLINE,
Reg.

15. *Baxter's Possession.*

Extract from the Book of Possessions in the town of Boston.

Nicholas Baxter his Possession within the limits of Boston.

One house and lott, bounded with the streete or lane north and west, Edward Browne and the bay east, Matthew Lyons southward.

A true copy.
Attest: S. F. McCLEARY,
City Clerk.

ing: Know ye, that for and in consideration that we have received of Jonathan Bull, of said Boston, mariner, and administrator to the estate of said John Bull, our respective parts and proportions of the surplusage and clear personal estate of the said John Bull, and also in consideration that he hath paid thirty-two pounds fourteen shillings and nine pence to each of us, in full satisfaction for our share of and in the real estate of the said John Bull, we, the said Eleazer and Mary Dorby, John and Margaret Jones, Samuel and Martha Greenleafe, Michael and Mehitabel Martin, have given, granted, bargained, sold, remised, released, and quit claimed, and by these presents do give, grant, bargain, sell, remise, release, quit claim, and confirm unto the said Jonathan Bull, his heirs, executors, administrators, and assigns forever, all our and each of our right, estate, title, interest, property, claim, and demand whatsoever, which we now have, or at any time to come can pretend to have or claim of and in all that certain dwelling-house and land in Boston afores'd, wherein the said John Bull lately dwelt, at the south-easterly part of the said town, commonly known by the name of the Bull, with the land and beach and flatts thereto belonging, and also of and in all other real estate in Boston aforesaid, whereof the said John Bull died seized, and likewise all his personal estate wheresoever lying or found: To have and to hold the said given, granted, sold, and released dwelling-house, lands, real and personal estate whereof the said John Bull died seized and possessed, situate in Boston aforesaid, unto him the said Jonathan Bull (in his peaceable possession now being), his heirs, executors, administrators, and assigns forever, to his and their own sole and proper use, benefit, and behoof forevermore, and that of and from all right, estate, title, interest, reclaim, challenge, or demand whatsoever to be by us, the said Eleazer and Mary Dorby, John and Margaret Jones, Samuel and Martha Greenleafe, Michael and Mehitable Martin, or either of us, our heirs, executors, or administrators respectively had, made, pretended, or claimed of, in, or to the said given, granted, and released real and personal estate of the said John Bull, we and each of and every of us and them shall be utterly debarred and forever excluded of and from the same by force and virtue of these presents.

In witness whereof we have hereunto put our hands and seals the third day of April, Anno Dom. one thousand seven hundred twenty-four.

ELEAZER DORBY and a seal.
MARY DORBY and a seal.
JOHN JONES and a seal.
MARGARET J. JONES, her mark, and a seal.
MICH'L MARTIN and a seal.
MEHETABEL MARTIN and a seal.
SAM'L GREENLEAF and a seal.
MARTHA GREENLEAF and a seal.

Signed, sealed, and delivered in presence of us.
THOMAS BROWN,
EBEN BELCHER,
RICHARD HOOD.

Signed, sealed, and delivered in presence of us by
MICHAEL MARTIN,
MARY JONES,
ANNA THOMPSON.

SUFFOLK, ss:

BOSTON, April the 6th, 1724.

Eleazer Dorby and Mary his wife, John Jones and Margaret his wife, Samuel Greenleafe and Martha his wife, and Mehetabel Martin acknowledged this instrument to be their free act and deed; before me,

TIMO. CLARKE,
Just. Pac's.

SUFFOLK, ss:

BOSTON, December the 5th, 1724.

Then Mich'l Martin personally appeared and did acknowledge the above and foregoing instrument to be their free act and deed; before me,

TIMO. CLARK,
Just. Peace.

January 19th, 1724.

Received and accordingly entered and examined.
P'r JOHN BALLENTINE,
Reg'r.

A true copy from the Records of Deeds for Suffolk county, Lib. 38, fol. 99.
Attest: HENRY ALLINE,
Reg.

19. *Certificate of Marriage of Elizabeth Price.*

COMMONWEALTH OF MASSACHUSETTS:

CITY OF BOSTON, March, 1851.

I, the subscriber, do hereby certify, that it appears by the Registry of Marriages of said Boston, that the Reverend Roger Price and Elizabeth Bull were married by the Reverend Timothy Cutler, D.D., on the fourteenth day of April, in the year of our Lord one thousand seven hundred and thirty-five.

The record is in the words and figures following, viz: "The Rev.

Roger Price and Elizabeth Bull married by the Rev. Timothy Cutler, D.D., 14th April, 1735.

ARTEMAS SIMONDS,
City Registrar.

I, Artemas Simonds, above named, depose and say, that I hold the office of City Registrar of the City of Boston, in the County of Suffolk and Commonwealth of Massachusetts; that I am the keeper of the registry of births, marriages and deaths, in said city, and that the above is a true extract from the records of Marriages in said city, with the exception above named, as certified by me.

ARTEMAS SIMONDS.

SUFFOLK, ss. BOSTON.

the above named appeared and made oath to the truth of the above certificates by him subscribed.

Before me,

Justice of the Peace.

20. *Elizabeth Price to L. Valentine.*

Know all men by these presents, That I, Elizabeth Price, of Hopkinton, in the County of Middlesex, single woman, in consideration of the covenants and engagements of Lawson Valentine, of Cambridge, in said county, trader, of even date herewith, have remised, released and forever quit-claimed, and do for myself and my heirs, remise, release, and forever quit claim unto the said Lawson Valentine and his heirs and assigns, all the lands and tenements which I have or hold, or have right to hold and possess in Hopkinton aforesaid, with all the privileges and appurtenances to the same belonging, notwithstanding the same are not particularly described by metes and bounds; and for the consideration aforesaid, I do by these presents remise, release and forever quit claim unto the same Lawson Valentine, his heirs and assigns, all the lands and tenements which I have and hold, or to which I am in any way entitled, situate in Boston, in the County of Suffolk, with all the privileges and appurtenances to the same belonging, notwithstanding the said lands are not particularly described by metes and bounds: To have and to hold the aforedescribed premises to the said Lawson Valentine and his heirs and assigns, forever, so that neither I nor any person claiming by, through or under me, shall have claim or title thereto: Provided, nevertheless, that if the said Lawson Valentine, his heirs, executors and administrators, shall not well, truly and faithfully perform and keep the covenants and engagements, all and singular, contained in the obligation of the said Lawson Valentine to me, the said Elizabeth Price, of even date herewith, then this deed shall be

forthwith null and void. In testimony whereof, I have hereto set my hand and seal, this first day of July, in the year of our Lord eighteen hundred and twenty.

ELIZ. PRICE, & a seal.

Signed, sealed and delivered in presence of us,
ELISHA FAIRBANKS,
FRANCES A. EWING.

MIDDLESEX, ss.

July 3d, 1820.

Then the said Elizabeth Price personally appeared before me and acknowledged this instrument to be her free act and deed.

Before me, ELISHA FAIRBANKS,
Justice of the Peace.

August 16th, 1820.

Received, entered and examined.

P'r WM. ALLINE,
Reg'r.

A true copy from the records of Deeds for the County of Suffolk, Lib. 268, fol. 232.

Attest: HENRY ALLINE,
Reg.

21. *Andrew Price to L. Valentine.*

Know all men by these presents, That I, Andrew Price, Clerk Rector of Britwell, Salome, Oxfordshire, in the Kingdom of Great Britain, in consideration of forty-five hundred dollars to me paid by Lawson Valentine, of Cambridge, in the State of Massachusetts, one of the United States of America, merchant, the receipt whereof I do hereby acknowledge, have sold, transferred, and conveyed, and by these presents do sell, transfer and convey to the said Lawson Valentine all my right, title and interest in all those certain real estates at the bottom of Summer street, in Boston, in the County of Suffolk and State of Massachusetts, aforesaid, described as follows, viz: Beginning on Sea street at the south-easterly corner of land of one Clements, now occupied by one Vose; thence running as the fence now stands on Sea street, in a straight line seventy-one feet; then turning and running north-easterly fifteen feet; then north-westerly on Summer street as the fence and front of a shop now stands, sixty-six feet to land owned or occupied by William P. Whiting; then southerly by the land of said William P. Whiting, eighty-one feet three inches, to the aforesaid land of said Clements; then by said land of said Clements ninety feet ten inches, to the point of beginning, with all the rights and privileges to the same

pertaining: Also one other lot on the opposite side of said Sea street, bounded northerly on the south side of Summer street and the town dock at the end thereof, extending from the corner of Summer street and Sea street, formed by the east side of Sea street and by the south side of Summer street, to the channel; then bounded on the north by Sea street, from the aforesaid corner to the land of David W. Bradlee and Ann his wife; then bounded southerly by said land of said David W. Bradlee and Ann his wife, in her right, and extending from Sea street out to the channel, and then bounded easterly by the said channel, with all rights and privileges and appurtenances unto the same in any wise appertaining: To have and to hold the same to him, the said Lawson Valentine, his heirs and assigns, forever; and I do hereby covenant with the said Valentine, that I have good right to sell and convey the premises in manner as aforesaid, and that I will warrant and defend the same against all persons who may lawfully claim and hold the same by, through or under me in any manner whatsoever.

In testimony whereof I, the said Andrew Price, by George Sullivan, my Attorney, have hereunto set my hand and seal, this twentieth day of July, A. D. eighteen hundred and twenty-one.

ANDREW PRICE,
By his Attorney, GEO. SULLIVAN. [L. S.]

Signed, sealed and delivered in presence of
CHARLES P. CURTIS,
GEORGE R. SULLIVAN.

SUFFOLK, SS.

July 23d, 1821.

Then personally appeared the above named George Sullivan before me, and acknowledged the above instrument to be the voluntary and deed of the above described Andrew Price.

CHARLES P. CURTIS,
Justice of the Peace.

BOSTON, July 25, 1821.

Received and entered with Suffolk Deeds, Lib. 272, fol'o 209.

P'r HENRY ALLINE,
Reg'r.

RHODE ISLAND DISTRICT, SC.

Clerk's Office, Circuit Court:

At PROVIDENCE, September 12th, 1853.

I, John T. Pitman, Clerk of said Court for said District, do hereby certify that the above and foregoing two pages contain a true copy of the original Deed filed of record in the case Thomas Richardson *vs.* The City of Boston, disposed of at the June term, A. D. 1853.

And I further certify that said original deed was, upon motion to the Court, delivered to the plaintiff in said case, this copy being left.

In testimony whereof I have hereunto set my hand and the seal of said Circuit Court, on the day and year above written.

JOHN T. PITMAN,
Clerk.

22. *Osgood, Guardian, to John French.*

Know all men by these presents: Whereas Isaac P. Osgood, guardian of Andrew P. Valentine, W'm P. Valentine, Edward L. Valentine, and Francis E. Valentine, minor children and heirs of Lawson Valentine, late of Boston, in the county of Suffolk, merchant, deceased, intestate, by an order of the Court of Probate begun and held at Boston, within the county of Suffolk and Commonwealth of Massachusetts, on the twenty-seventh day of April last past, was licensed and empowered to sell and pass deeds to convey all the right, title, and interest of said minor children in and to the real estate of the said Lawson Valentine at the time of his decease hereinafter described; and whereas he, the said I. P. Osgood, guardian as aforesaid, having given thirty days' public notice of the intended sale, by printing a notification of the time and place of sale three weeks successfully in the newspaper called the Daily Columbian Centinel, printed at Boston, and by posting said notification in said Boston, and in Charlestown and Cambridge, in the county of Middlesex, thirty days before the sale, and having first taken the oath by law in such cases required, did on the fourth day of June, in the year eighteen hundred and thirty-five, pursuant to the license and notice aforesaid, sell by public auction to John French, of Boston aforesaid, merchant, the real estate of the said minor children hereinafter described, to him for the sum of thirteen thousand twenty-five dollars, said sum being the highest bid at said sale, he being the highest bidder therefor:

Now therefore know ye, that I, the said I. P. Osgood, guardian as aforesaid, by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of thirteen thousand twenty-five dollars, paid by the said John French, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey unto him, the said John French, the right, title, and interest of said minor children in a certain lot of land situate on Sea street, in said Boston, bounded as follows, to wit: northerly on the south side of Summer street and the town dock at the end thereof, extending from the corner of Summer and Sea streets formed by the east side of Sea Street and by the south side of Summer street to the channel; then bounded on the north by Sea street from the aforesaid corner to the land of David W. Bradlee and Ann his wife; then bounded southerly by said land of said David W. Brad-

lee and Ann his wife in her right, and extending from Sea street out to the channel, and then bounded easterly by the said channel, or however otherwise the same is bounded; also the right of dower in the aforesaid lot of land of Mary Ann Valentine, widow of said Lawson Valentine, released to me by deed of even date of these presents, meaning hereby to convey all the right, title, and interest which said Lawson Valentine acquired by the deeds of Andrew Price and Elizabeth Price to him of the same lot of land: To have and to hold the afore granted premises, with all the privileges and appurtenances to the same belonging, to him, the said John French, his heirs and assigns, to his and their use and behoof forever. And I, the said I. P. Osgood, guardian as aforesaid, for myself and for my heirs, executors, and administrators, do hereby covenant with the said John French, his heirs and assigns, that in pursuance of the license aforesaid, I gave thirty days' public notice of the said intended sale by posting and printing the same as aforesaid, and that I took the oath by law required previous to said sale.

In witness whereof, I, the said I. P. Osgood, guardian as aforesaid, have hereunto set my hand and seal this fifth day of June, in the year of our Lord one thousand eight hundred and thirty-five.

[L. S.] ISAAC P. OSGOOD,
Guardian of the heirs of L. Valentine.

Signed, sealed, and delivered in presence of
EDWARD BLAKE.

SUFFOLK, SS:

June 10th, 1835.

Personally appeared the above named I. P. Osgood, acknowledged this instrument to be his free act and deed, before me.

EDWARD BLAKE,
Justice of the Peace.

BOSTON, June 15, 1835.

Received and entered with Suffolk Deeds, Lib. 392, fol. 84.

By HENRY ALLINE,
Reg'r.

RHODE ISLAND DISTRICT, SS:

CLERK'S OFFICE, CIRCUIT COURT AT PROVIDENCE, September 12th, 1853.

I, John T. Pitman, Clerk of said Court for said District, do hereby certify that the above and foregoing three pages contain a true copy of the original deed, filed of record in the case Thomas Richardson *vs.* The City of Boston, disposed of at the June term, A. D. 1853.

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And I further certify that said original deed was upon motion to the Court delivered to the pl'ff in said case; this copy being left.

In testimony whereof I have hereunto set my hand and the seal of said Circuit Court on the day and year above written.

JOHN T. PITMAN,
Clerk.

23. *Town Record as to Summer street*, 1708.

Anno 1708, May ye 3d.

The street leading easterly from Doctor Okes his corner in Newberry street, passing by the dwelling-house of Capt. Timo. Clark, extending to ye sea—Summer street.

A true copy from Records of Town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

Anno 1708, May ye 3d.

The way from the lower end of Summer street, leading northeasterly by the sea side, with the return up to the rope-walke—Flownder Lane.

A true copy from the Records of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

24. *Town Record as to Summer street*, 1740.

Anno 1740, June 30.

On Fryday last, the 27th of June current, the Selectmen met at Bull's wharf, the lower end of Summer street, upon the desire of Mrs. Dyre, and run the line between the town and said Dyre, and staked out the highway, taking the measure from the well on the north side of the said highway, which is agreeable to the Record thereof made in the year 1683.

A true copy.

Attest: S. F. McCLEARY,
City Clerk.

25. *Richardson's Grant from the Legislature.*

COMMONWEALTH OF MASSACHUSETTS.

In the year one thousand eight hundred and forty-five, An act to authorize Thomas Richardson to extend his wharf.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows: Thomas Richardson, proprietor of a certain wharf called Bull's wharf, situated on Broad street near the end of Summer street, in the city of Boston, is hereby authorized to extend and maintain his

said wharf to the harbor channel, as far as the line established by the act entitled "An act to preserve the harbor of Boston and to prevent encroachments therein," passed the nineteenth day of April, in the year one thousand eight hundred and thirty-seven, and shall have the right to lay vessels at the sides and end of said wharf, and to receive dockage and wharfage therefor, provided that so much of said wharf as shall be erected under this act shall be built on piles, and that this act shall in no wise affect the legal rights of any corporations or persons whatever.

House of Representatives, Feb. 26, 1845.

SAM'L H. WOLLEY, J'R,
Speaker.

Passed to be enacted in Senate Feb. 27, 1845.

Passed to be enacted.

LEVI LINCOLN,
President.

Feb. 27, 1845. Approved.

GEO. N. BRIGGS.

Feb. 28th, 1845. A true copy.

Attest: JOHN G. PALFREY,
Sec'y of the Common'th.

26. *Order of Mayor and Aldermen, July 3d,* 1849.

CITY OF BOSTON.

In Board of Mayor and Aldermen, Tues., July 3d, 1849.

Whereas, there are two indictments pending against the City of Boston, for a public nuisance on the flats at the foot of Summer street, in said city, which nuisance is said to be caused mainly by an ancient sewer which has its outlet upon the said flats; and whereas great complaints of said nuisance have been made to this Board by divers citizens; and whereas due notice has been given to Thomas Richardson, and all persons interested, to appear and show cause, if any they had, why the said flats should not be filled up, and the said sewer be extended to low water mark, and such other means be taken in the premises as should effectually prevent the said nuisance for the future; and at the meeting of this Board on the twenty-fifth ultimo, the said Richardson did appear and was heard in his own behalf; and whereas this Board have personally viewed the premises and are satisfied that they are in a state of nuisance and are dangerous to the public health, and that the only effectual method of removing the said nuisance and effectually preventing the same in future is by extending the said drain:

Therefore, ordered that the common sewer at the foot of Summer street be extended five hundred feet over the land or flats belong-

ing to the city in the direction of the channel, under the direction of the Superintendent of sewers and drains.

A true copy.

Attest: S. F. McCLEARY,
City Clerk.

27. *Order of Mayor and Aldermen, July 30th,* 1849.

CITY OF BOSTON, Monday, July 30th, 1849.

In Board of Mayor and Aldermen.

Ordered, that due notice be given to Thomas Richardson, and all others interested, to remove an obstruction in Summer street, near where the common sewer enters the dock, within ten days; and in default thereof that the City Marshal be instructed to remove the same.

SUFFOLK, SS:

CITY OF BOSTON, July 30, 1849.

I have this day notified the within named Thomas Richardson, by leaving him an attested copy of this notice at his last and usual place of abode, and on the thirty-first day of the same July I notified William B. Perkins and Calvin Bullard, by delivering to each of them in hand an attested copy of this notice, and on the same day I notified Matthew Hayes, by leaving him an attested copy of this notice at his last and usual place of abode.

WILLIAM MUNROE,
Constable.

Fees.

Three services,	90
Three travels,	12
One service and travel,	34
	$1 36

A true copy.

Attest: S. F. McCLEARY,
City Clerk.

28. *Order of Mayor and Aldermen, August* 21, 1849.

CITY OF BOSTON.

In Board of Mayor and Aldermen, August 21, A. D. 1849.

Whereas, by an order of this Board, passed on the third day of July last past, it was ordered that the common sewer, at the foot of Summer street, be extended five hundred feet over the land or flats belonging to the city, in the direction of the channel, under the direction of the Superintendent of sewers and drains; and

whereas, certain obstructions have been placed in that part of Summer street as anciently described and laid out lying between Broad street and the sea, which obstructions ought to be removed to the end that the said drain may be properly laid, and that free access to the same may be had over a public way; and whereas, in the opinion of this Board, after personal inspection of the premises and examination and due notice to all parties interested, the said way ought to be kept open from Broad street to the sea; and whereas, by an order of this Board, passed on July thirtieth now last past, it was ordered that due notice be given to Thomas Richardson and all others interested, to remove all obstructions in Summer street, near where the common sewer enters the dock, within ten days, and in default thereof that the City Marshal be instructed to remove the same; and whereas, it appears that due notice of the said order was given according to the terms thereof: Now therefore be it ordered, That the City Marshal cause the said obstructions to be removed forthwith.

A true copy.

Attest: S. F. McCLEARY,
City Clerk.

29. *Extract from Town Records, 17th 8th month, 1636.*

17th day of the 8th month, 1636.

At a meeting this day before Thomas Oliver, Thomas Leverett, W'm Hutchinson, Robert Keayne, John Newgate, W'm Colbourne, John Coggeshall, W'm Brenton, and John Sampford, it is ordered that John Gallop shall remove his puyles at his yarde end within 14 days and to rainge them even with the corner of his house, for the preserving of the way upon the sea banke.

Also that there shall be a streete waye between Henry Lynn and Mr. Samuel Cole's ground, to run upp from the waterside to the next great crosse streets, 1 rod and a half broad.

Also another layne to get up from the waterside by John Gallop's a pole breadth unto the same crosst way.

Also another layne to be left to goe from the waterside upon the banke, or near that goes up from the end of John Mylane's house, next W'm Aspinwall's ground, and to goe along to the Mylne Cove a rod and a half broad.

A true copy from the Records of the Selectmen of Boston.

Att.: SAM'L F. McCLEARY,
City Clerk.

30. *Extract from Town Records, 26th 2d month, 1652.*

1652, 26th of 2d month.

At a meeting of the Selectmen, &c., There is granted to John Anderson libertie to wharf before the highway adjoining to his

land, *one* the one side and the land of John Crabtree on the other side, and that libertie granted unto him for to take wharfing of strangers for goods or wood shall be landed by them *one* the said wharf; but he hath no libertie to take wharfing of any inhabitants of this town for either goods or wood landed on that part of the wharf before the highway, provided it be not there above twenty-four hours, if it be, seasonable notice for to get it away, or be not the Lord's day.

A true copy from the Records of the Selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

31. *Extract from Town Records, May 3d,* 1708.

1708, May 3d.

At a meeting of the Selectmen, &c., *ordered*, That the streets, lanes and alleys of this town, as they are now bounded and named, be recorded in the Town booke which are as followeth, namely:—

81. Cross street. The way leading from the mill-pond southeasterly by the late Deacon Phillips' stone house extending down to the sea.

83. Wood lane. The lane by the house of the late Capt. Timothy Prout, deceased, leading from Middle street to First street and so down to the ye sea.

89. Fleet street. The street leading from Williams' corner nigh Mr. Jones Clarke, southwesterly down to the sea by Scarlet's wharfe.

A true extract from the Records of the Selectmen of the town of Boston.

Attest: S. F. McCLEARY,
City Clerk.

32. *Extract from Town Records, August* 30, 1709.

Vote of Selectmen, Township, 1709.

Boston, ss:

At a meeting of the Selectmen, August 30, 1709, the Selectmen having viewed and considered the way or slip at the lower end of Fleet street, ordered, that the same be preserved and continued twenty-one foot in breadth between the housing of Mr. Josiah Wilcot on the north, and the land or property of C. Habijah Savage on the south, and that the same breadth be continued down to low water mark.

A true copy from the Records of the Selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY,
City Clerk.

33. *Lease of Richardson to LeCraw, 1st April, 1848.*

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and forty-eight, by and between Thomas Richardson, of Boston, in the county of Suffolk and Commonwealth of Massachussets, gentleman, of the first part, and David R. Lecraw, of Marblehead, in the county of Essex, mariner, and William B. Perkins, of said Boston, coal merchant, of the second part, witnesseth, That the said Richardson doth hereby release, demise, and let unto the said lessees all that wharf estate situate on Broad street near the foot of Summer street, in said Boston, known as the "Bull wharf," with the buildings thereon standing, save and except, however, the short dock on the southerly side of said wharf adjacent to the Summer street wharf, the sole and exclusive use of which said last mentioned short dock is reserved to Calvin Bullard; and save and except moreover, the attic of the long building on the wharf herby demised, which said attic, and convenient access thereto and therefrom are hereby reserved for and for the use of said Richardson, the lessor, exclusively, to hold the said premises with the rights, easements, and appurtenances to the same belonging, for the term of three years from and after the day of the date hereof, yielding and paying therefor the rent of twenty-two hundred dollars yearly, payable in quarterly payments of five hundred and fifty dollars each, on the 1st days of every July, October, January, and April, during said term; said lessor having the right to demand of the said lessees their negotiable note for the rent before it accrues, for not more than six months' rent in advance at any time, it being understood that if this lease is terminated by the lessor, as hereinafter provided, he shall refund to them before their removal from the premises, all rent overpaid; said lessor agrees to remit one hundred dollars of the above reserved rent yearly, if, within one year from the day of the date hereof, a building for the deposit of coal shall be erected on the demised wharf near Broad street, which shall cost at least three hundred dollars; and the said lessees, for themselves, their executors, and administrators, do covenant and agree to and with the said lessor, his heirs and assigns, that they will pay the said rent in manner above stipulated, and that they will quit and deliver up the premises to the lessor, his heirs and assigns, peaceably and quietly at the end of the term, in as good order and condition (reasonable use and wearing thereof, and damage by fire or other casualties excepted) as the same now are or may be put into by the said lessor, or those having his estate in the premises, and that they, the said lessees, and those holding under them, will pay the rent as above stated, and also all the taxes and assessments whatsoever, whether in the nature of taxes now in being or not, which may be payable for or in respect of the said premises or any part thereof, during the said term; and also the rent and taxes and assessments, as above stated, for such further

time as they, the said lessees, or those claiming under them, may hold the premises, and that they will not make or suffer any waste thereof, nor lease, nor underlet, nor permit any other person or persons to occupy or improve the same; nor make, or suffer to be made any alteration therein, nor assign this lease but with the approbation of the lessor or those having his estate in the premises thereto in writing being first obtained, and that the lessor or those having his estate in the premises, with their agents at reasonable times may enter the said premises to view and make repairs and improvements, and in case the said rent shall be in arrear or any of the covenants aforesaid to be observed on the part of the said lessees or those holding under them shall be broken, the said lessor or those having his estate in the premises, whilst such neglect or default continues, may without further notice or demand, enter upon the premises and expel the lessees and those holding under them without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant; provided, however, that in case the premises or any part thereof shall, during said term, be destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use and habitation, then and in such case the rent herein before reserved, or a just and proportional part thereof according to the nature and extent of the injury sustained, shall be suspended or abated until the said premises shall have been put by the said lessor or those having his estate in the premises, in proper condition for use and habitation; provided always, and these presents are upon this condition, anything above expressed to the contrary notwithstanding, that it shall be lawful for the lessor to determine and make void this lease, and resume possession of the demised premises, in any year of the term hereby created on the last day of July, in said year, having first given to said lessees in person, or left at their last and usual place of abode, on or before the first day of May, in said year, notice in writing of his intention to determine it; and in case they shall remove their effects and abandon the premises on said last day of July, in the year of said termination, they shall receive from the lessor the sum of one thousand dollars as liquidated damages sustained by reason of such removal and abandonment, and in addition thereto the actual cost and expense of said removal; said actual cost and expense in case of any difference of opinion to be determined by three arbitrators, to be mutually chosen by the lessor and the lessees, but in no event to exceed seven hundred dollars; and said liquidated damages to be paid immediately after said removal and abandonment, and said cost and expense as soon thereafter as they can be determined. If the lessor should request the lessees to abandon the demised premises within thirty days after written notice to that effect given, and if said lessees should see fit to comply with said request, then they, in addition to the liquidated damages and cost and expense above provided for, shall be dis-

charged of all rent accruing within said thirty days; all the buildings and fixtures which have been or shall be erected on the demised premises by the lessees, may be removed by them if removed without essential injury to the premises, before the termination of this lease, whether said lease be determined by its own limitation or otherwise, save and except, however, the building for the deposit of coal, above provided for, which shall not be removed at all; but if this lease be terminated by the lessor in the way herein provided, he shall repay the said lessees the difference between the cost of erecting said coal building, which in no event shall exceed three hundred dollars, and the sum which shall have been previously remitted on account of said coal building as above provided; the lessor reserves the right to extend the wharf hereby demised to the Commissioners' line at any time he sees fit, and to have the exclusive use of the extended portion, and free liberty of access thereto and therefrom by himself, servants, workmen, carts, and carriages at all times without molestation or claim for damages by the lessees, it being understood that for so much of the demised wharf as he shall use by means of access as aforesaid, he shall give said lessees an equal area of space or room on said extended portion.

Witness our hands and seals the day and year first above mentioned.

TH. RICHARDSON,
DAVID R. LECRAW,
W'M B. PERKINS and a seal.

Executed in presence of
CALVIN BULLARD,
ALFRED CHENEY.

Calvin Bullard was tenant of Mr. Richardson at time drain was built on Summer street. Explains to Jury what part of wharf occupied by him. Upper part of Price Wharf. I had the wharf from Sea street down far enough below the little dock for one vessel. I had also the little dock, and unloaded almost all my vessels in the little dock by a verbal contract, for no particular time; was tenant at will at $1200 rent per annum, and the taxes, and occupied it from 1837. Structure put there July, 1849. Mr. Emerson occupied the lower part of wharf. The building of the drain destroyed the little dock entirely, except for boats. I couldn't get a vessel in. Mr. Emerson occupied the lower part, and I could not get a vessel in on that part when he was there. Aug. 1, 1849, I got rent reduced one half, and afterwards found that was not enough. I remained at the rent of $600 to 15th April, 1852, and then it was reduced to $300. The taxes were paid by Mr. Richardson after '49. Tax for 1851 was $98 00. I rather think I paid for 1850. There was one tax, I think the one in 1851, which I did not pay. I told Mr. Richardson that the rent was too much; that

tax for that year was $98, my proportion $98. I was there when that drain was put down. The reduction was claimed by me and consented to by Mr. Richardson. I have noticed since the drain was built, that the wash from this drain has filled up the dock a good deal. That part of the Bull Wharf built under the Legislature grant, is shoaled out by the discharge from the drain further than the end of the wharf. Can see it there. I should think that from the end of the sewer it was shoaled out from 75 to 100 feet, and my impression is that it is filling up inside, each side of the sewer. The superficial wash of the streets of Boston from as far up as the State House, goes through the drain.

Cross-Examined.

I have not now a suit. No, my suit was left to referees. I have no suit against the City of Boston now. The referees have done with it. My case was left to referees. They agreed upon the amount of damages, and it is to abide the decision of Capt. Lecraw's case, and my case depends upon the decision of Lecraw's case. This is the same Mr. Lecraw who occupied the dock with me. I have kept the wharf since 1837. I never lived in that neighborhood. I lived south of this. I was acquainted there. Have known that dock ever since I was a boy. This piece from Summer street down was filled up before we hired of Mr. Richardson. I can't tell where the surface drain was discharged before that time. I have no doubt the filth, &c. came down the street into the dock, though I never noticed much. I had reference to the dock before the Freight House was built. I left there first of April, 1853. I paid a rent of $300 for one year. I left April 1, 1853. Nearly all the lumber I took in I unloaded in the short dock. I occupied the short dock nearly all the time from spring till fall with Captain Lecraw. When he had a freight of coal come in and I was not using it, Lecraw occupied it. I had the preference of the dock so far as I wanted it. I can't tell how many vessels I had to bring there in the course of a year. Say a dozen a year, maybe more. I can't be sure. The docks generally froze up in the winter. The small dock froze up very readily. After the drain was built I discharged the vessels at the berth below the short dock. I had to discharge there. Don't recollect of having the vessels there at any time before the drain was built. The upper dock was much the most convenient, because it was so much less distance to carry lumber.

Direct Examination Resumed.

My rent was payable quarterly, and the quarters expired the last day of August and began first of September, and so on to March. The first of August it was reduced to $600. The second reduction was made afterwards. I am 58 years old. When I was

a boy I used to go there. It has always been used for the passage of vessels. I recollect when Mr. Bill Vose occupied there in 1815.

Cross-Examination Resumed.

I never knew any vessel prevented from coming to my wharf by deposit from drain while I was there. I have known a good many vessels hauling across from Lecraw's wharf to get stuck there, and wait till next tide. Can't tell any particular vessel or particular time. It was before I left there and after the drain was built. Can't name any particular time. They were coming to my wharf or to Mr. Emerson's. They were generally coal vessels which drew good deal of water. I didn't deal in coal. I was not subjected to any expense. My estimates are merely the result of inspection. I never made any measurements. It used to be level—the mud—now you can see a ridge. I should say it was piled up two feet at the mouth of the drain. It shoals out to the channel. I should think it was fifty feet to the channel. I don't know about the deepening of the channel. Part of the drain has been carried away, and some of the posts. Vessels not seeing it when it was covered, would run against it.

John Emerson was tenant of plaintiff of lower part of Price Wharf, at will. Rent, $1200 and taxes. Injured by drain, claimed a reduction of rent and procured abatement of $400 per annum, I paying the taxes as before. The reduction was made 1st December, 1849, and continued after that time as long as we had the wharf, till April, 1853. It was a fair reduction. We thought we ought to have one half, and he offered to abate one third, and we accepted the abatement, though we should have preferred not to have the drain there. Rent payable quarterly. After April, 1853, took whole wharf. We went there in fall of 1844, and last season went the other side. We had the other wharf in April, 1854. Up to April, 1852, it shoaled considerable so as to hinder vessels. Before drain was built, vessels could draw across from Lecraw's wharf to ours. After drain, had to haul below. One stuck 2d or 3d years after drain was built. It hurt her. Hard bed for vessels. Some would refuse to come in there. Likely to be damaged by drawing in too narrow a place, by the side of piles.

Cross-Examined.

I got all vessels needed to bring in what I wanted. We gave more, I think for freights than others; prior to April, 1852, knew no instance, but vessels would take easier to other wharves. They would charge ninepence a ton more on freight of coal. Vessels vary in freights. Some would say they would not come at any price. Freights may rise or fall by delay. A vessel got stuck 2d or 3d year, hauling across, just at mouth of drain. Never knew vessel get stuck at high-water before. Have known a vessel

to get stuck there. Do not know the class. I do not know precisely the draft of vessel which stuck, but she got off next tide.

Henry Curtis.—Am of one of Ballast Lighter Inspectors. Formerly owned small vessels, and had them employed about wharves. Was interested in 9 small vessels, 3 bringing wood, &c., and others in bringing ballast or sand. Am 52 years old, and knew these wharves since a boy, have been about there in boats. There was always a dock there, and vessels hauled in and out to lay at wharf. This was not a passage way, but a dock to lay vessels. The dock is impaired in value to these wharves by drain. The railroad side was left widest. It appears to me that flats have gained off by drain. Used to come in with lighters at end of wharves, at dead low water, but now can't. My experience extends 15, 16, 18, or 20 years. It did not appear to me to rise at sides of wharf, but edge of channel gains off, but flats don't rise above general level. The drain was laid to low-water mark, but now does not extend to low-water mark. The drain not so far out by thirty feet as at first. The flats gained off 100 feet in front of drain, and shoaled out still farther. Used to haul in at Piper & Bull's wharf, across at dead low-water, where now we stop a length off from there. I was part owner of some real estate at South End with brother, but not occupied wharf since 1842 as a wharfinger.

Cross-Examined.

I do not perceive that flats are higher, but shoaled out further in front of drain. Wherever there is a rush of water out of a drain where rush stops there is a deposit.

Daniel Prescott.—Keep a wood and coal yard, and have for about 27 or 28 years in Boston. I have kept on Harrison Avenue, some distance off. I was partner on Liverpool Wharf. I have seen the drain. I am acquainted with Bullard's & Lecraw's business, and have carried on same business. A fair reduction of Bullard's rent I should think was made. Bullard's rent was not worth half. Mr. Emerson was injured considerably. I should think from ⅓ to ½ of his rent. Mr. Lecraw's dock was taken wholly away. I would'nt give half as much for Lecraw's premises. I was with Lecraw one year, assisting him in his business, three years ago this spring. It was pretty difficult, after the drain was built, to do any thing. Capt. Lecraw had no dock at all. Before then there were two docks. He had to usé Emerson's afterwards as he could. Before I came here to Newport two years ago, I made measurements. I had heard good deal said. I went and measured for my own satisfaction and measured off Piper's Wharf, Bull Wharf, and Price Wharf. I have looked at it afterwards, but have made no measurement. At the time I was with Lecraw I hauled a vessel in. It came quartering. It stuck up against Emerson's wharf, heeled

over and lay all night. Injured her bows considerable. It is my impression that I made a foot less water at the mouth of the drain, than at the other wharves. There would have been as much there as at the other wharves but for the drain. This spreads out. I have known the Bull Wharf 44 years, and the other side ever since it has been built. I guess there wasn't much of a wharf there 44 years ago. Ever since I came to Boston vessels passed up and discharged there, and frequently lay there through the winter.

Cross-Examination.

By vessels passage up and down I mean lying at wharf and discharging cargo, and have known vessels lie in dock during winter. Mr. Bill Vose occupied the Bull Wharf at that time 44 years ago, the dock went up to what is now called Broad street. The wharf there was occupied by Bill Vose, and used to be called Bull Wharf. I frequently saw vessels come to Bull Wharf to unload alongside of Bull Wharf. Never knew any vessel discharge at foot of Summer street, but at wharves on side of dock. What I mean by passage of vessels was that it was a dock for vessels to go in to discharge at wharf. Oyster vessels paid Mr. Perkins for lying in there through the winter. He used to let it to them. I should think there was a foot difference in the measurement of water, but should not wish to swear to it. Measured without partiality. Perkins was dead, and I went for Lecraw's benefit.

Calvin Bullard Recalled.

I have found in my pocket a receipt dated 1st March, 1852, which was the time when the second reduction took place. The receipt is for rent at the rate of $50 per month. I have known these wharves since 1837, and during that time low-water mark has receded along that shore.

Cross-Examined.

Soon after I went there there was a great amount of stuff which ran down that drain, so much so as to be offensive. I signed an application to the City of Boston, June 28, 1838, for abatement of the nuisance caused by the drain. The common sewer was of the same length as now. It is said to come from the State House. The stench which came from it then was very offensive. All we wanted was to have it cleaned out with scows, &c. I judge the channel has receded by the eye. There is a general tendency to fill up from the shore.

David R. Lecraw.

I was tenant of the Bull Wharf at the time the drain was built. I had an abatement from $2200 to $1400 annually from

the time of the structure until the lease expired. I occupied after that until the lease expired. I occupied after that under a new arrangement, which was for Richardson to extend wharf and give me a berth there, and also for privilege of using south side of dock, and landing by platform bridge on Bull Wharf without pay. My rent was to be $1300 without taxes. This was verbal arrangement. We acted independently of each other in this agreement. I took into consideration being there; should not have gone on wharf otherwise. I occupied there from April, 1851, to 10th of May '54, rent payable quarterly. The addition to wharf cost about 2-3 per foot. I have heard so, but don't know. The structure was great acquisition to wharf, as it had no berth before. Wharf worth 6 or 700 dollars more with than without the addition. The drain was put there by Mr. Hansen as master workman, I believe under the superintendence of Mr. Wells. Mr. Wells was there directing. Mr. Wells is Superintendent of Sewers and Drains, as I presume. The police did not interfere with my own premises at first. After the body of police cleared away, they proceeded on to build drain for two or three days until drain got beyond small dock. Wells there occasionally; several times. About that time two policeman appeared on wharf. I had occasion to put a vessel in dock, and I asked them if I could take a vessel in dock, and they said no. They said the workmen must proceed, and I did not think proper to interfere with them. We protested against it when they commenced, and it availed us nothing. I saw superintendent of sewers, mostly in morning in his chaise, and occasionally at other times of day.

X. Ex.

The rent under lease was abated and then paid. We had decision in Circuit Court, and he sued me, and I paid it under advice of counsel. But since expiration of lease he has claimed no more than was agreed. I should not have gone there to give $2200 per annum, without drain—excessive rent.

The addition was built in August or September, 1851; the discharge from the sewers was very offensive before the drain was extended; after a long negotiation Richardson and I submitted the matter, and the agreement was that I should have the abatement unless I recovered. In breach of the agreement, I was sued, and by advice of counsel paid the rent which was abated.

John Emerson recalled.

I took Lecraw's wharf after him. Before the drain was put there, think that the rent of $2200 dollars was fair. We all thought our rents too high. Wharves were scarce, and difficult to be got. I have known Five Point Channel since 1844, low water mark has receded all along that shore since I have been there.

Cross-Examination.

I should have been willing to give 2200 dollars for the wharf, if I could not have done better; comparing it with other rents I should be willing to give it.

Elisha Copeland.—Am City Auditor; was in 1849 (produces bills, being vouchers to city for building this drain). They are paid by my draft on the City Treasurer.

A copy of one bill is as follows:—

CITY OF BOSTON,

To Charles Emerson, Dr.

July 30, 1849.	To 84 days' work driving piles for drain, 1 & 6,	$147 00
	12 days scow and engine $6,	72 00
	5336 ft. spruce piles, 4,	213 44
		$432 44

Rec'd payment,
CHARLES EMERSON.

Correct,
C. B. WELLS, *Supt.*

Approved,
ROGERS, *Ch. Jus.*

J. H. W.

A true copy.

ELISHA COPELAND,
Aud'r.

Robert Robbins.—Am in my 70th year; I have been on the wharves on Five Point Channel since 1810; first on Liverpool wharf, 5th wharf north; next on Dawes' wharf, 3d wharf north; next on Tileston's wharf, 2d wharf north, where I carried on business for 24 years. Have been familiar with wharves and coast. There was no Price wharf when I first came there, only a pile of stones and ballast, no structure; this part of Price wharf was not occupied for anything, a mere pile of ballast lying there for years. The tide did not come up to cover the stones, unless high; used to put tar and turpentine above on it. Had a graving yard to the south side of it, towards the Bradley estate; used to put on gravel with tar on it to make it hard, to make flats hard so as to walk round and grave vessels on. The passage between Bull wharf always was used for the passage of vessels. Low water mark has always been receding since I knew the place. The water has shoaled since the wharf was built out, so as to injure it very much. The drain has prevented vessels going up

dock. Before that vessels would stir up the mud, and the tide would wash it out. Now it remains there. On the outside can't tell under water, never measured. Before the drain was built $2200 was a high rent for the Bull wharf. I ceased to pay rent for Tileston's wharf since 1838. I have hired Otis' wharf in 1847, and occupied it three years, but none since. Wharves were not plenty, but there were always places to be had.

Cross-Examined.

When I first knew the Price wharf it was no place for landing. The water came up as far as Flounder alley, and the bulkhead was as high up as the foot of Flounder alley. Flounder alley turned a corner and came west. The city had a hole opposite, into which the stuff occasioned by the rain emptied, and country carts came and took it away. The fish box stood partly over the capstan, a temporary kind of thing. I never knew any one thing done on it, till Richardson built out and bought of Valentine. The flats all lay open to the south there, and they used them clear up to Fessenden's wharf. They grave vessels on the Price, Valentine wharf, Piper's, etc.; the same concern all south there. The Tileston wharf touched the Bull wharf; the vacant dock on the north was covered over with timbers 25 feet long. There was a carpenter's shop above on the wharf, and a long building occupied as a stable. I do not think the Bull wharf was then more than 200 feet long. I knew this locality for twelve years after I came there in 1810; a common sewer discharged into the dock at the head—a small drain. There was trouble about the smell. Country people came to get what went into the dirt catcher, the rest went into the dock. The town engine stood on the Price wharf. Engine No. 11 stood over the drain at the head of the dock for a short time, not more than three years. There was no dock on the north side of the Bull wharf. I never knew that there was any.

Capt. David Day.—I am in navigation and fishing; been to sea; am also owner of vessels; know Bull wharf since 1841. I have averaged once a week, eight weeks in a season, going with vessels at this wharf. At the time the drain was built there I had a vessel there at the Bull Wharf discharging; since the drain at the head of the Bull wharf it has shallowed. In 1849 I used to discharge 100 feet up into the dock. I could always go out of the dock with my vessel drawing from 6 to 6½ feet. There would be a space, and then out 15 feet there would be a bank out at low water mark when I used to come there first; there used to be out at the end of the wharf a smooth slaty bottom with 6 to 6½ feet of water, and out farther it would be 8 feet deep. My vessel was the only one that could get into the Bull wharf, she was narrow; after the drain was built and Mr. Richardson built the piece on, vessels arriving there will lay on soft bottom with her stern and her bow

on hard bottom, formed by the discharge from the drain. I should think the water had shoaled off from 100 to 150 feet. I should think it had shoaled 6 feet at the end of the wharf.

Cross-Examined.

The hard stuff came down and filled up from the streets. If they had carried the drain further off so that it could have emptied into the channel it would have been swept off by the tides, but would have been more injurious to the public. The hard substance and the soft rushes out with the water, and the hard sinks first and the light goes further out. Vessels working into this substance would squeeze it out. Low water mark might have been 200 feet up into the dock. This bar goes beyond low water mark. I should think that some of the hard substance goes out beyond low water mark, not much beyond the end of the dock. I should think that it extended 40 feet out from the end of the wharf. I have seen vessels coming to Emerson's wharf strike on the bar. They would know where it was. The dock on the inside of Bull's wharf, say 40 feet, and along the piece built on to the end of Bull's wharf has been filled up, and injured the wharf, with hard and soft substances. It is, I should think, 5 or 6 feet.

Cross-Examined.

It is five feet higher at the end piece of the Bull Wharf than it used to be. It has shoaled along this vicinity. I think there is a gradual filling up at all those wharves that run out to Five-point Channel.

Direct Resumed.

I did not mean to say that any other wharf had shoaled up five feet.

Cross-Examined.

No other wharf has filled up like this. I mean to say that the Bull Wharf has 5 feet less water than when I first knew it. I should think that this mud does not stop all in one place. But at the end of the wharves where the tide runs rapidly, I should be surprised to find there the deposit. When I used to go to this wharf I used to get away with 5 feet of water at low water, but after this drain was put there I found I could not get out of the bed she made.

Stephen P. Fuller, (Verifies the place as representing the two wharves as they existed in 1818, and at present.) I surveyed these wharves at that time. In 1821 I surveyed the Price Estate. There was the Short Wharf on it at that time as indicated by the places. (The Plaintiff further offered to prove by the testimony of Stephen

P. Fuller, that before the drain was commenced, at the request of Mr. Richardson he called upon Henry P. Rogers, Esq., Chairman of the Committee of Mayor and Aldermen on Internal Health, and stated to Mr. Rogers that he was authorized by Mr. Richardson to make an agreement that the City might carry the drain through the wharf occupied by Mr. Lecraw, and empty it under his high wharf. That Mr. Rogers said he would not treat with Mr. Richardson, for he had no confidence that he would fulfil any contract he made; upon which the witness told said Rogers that he would guarantee that any agreement which witness should make in behalf of Richardson, should be carried out by him.) This was after the vote had been passed to construct the drain, as witness understood. (To this testimony the Defendant objected as immaterial and incompetent, and the Court so ruled and excluded the same, to which ruling and exclusion the Plaintiff then and there excepted.)

The Plaintiff here rested his case, and thereupon the Defendants introduced, by leave of the Court, the ordinance of the city of Boston of June 18, 1849, a copy of which, marked A, is hereto annexed:

[A.]

Order of Mayor and Aldermen, June 18, 1849. City of Boston. An Orninance constituting the Board of Health for the City.

Be it ordained by the Mayor, Aldermen and Common Council of the City of Boston, in City Council assembled, as follows:

The Mayor and Aldermen shall constitute the Board of Health of the City, and shall exercise all the powers and perform all the duties now vested in the City Council as a Board of Health, with the right of carrying into execution such powers and duties through the agency of any persons whom they may select or in any manner which they may prescribe.

In Common Council, June 14, 1849. Passed: Sent up for concurrence.

BENJAMIN SEAVER,
President.

In Board of Mayor and Aldermen, June 18, 1849. Passed.

JOHN P. BIGELOW,
Mayor.

A true copy.

Attest: S. F. McCLEARY,
City Clerk.

And without offering any farther evidence on their part, did request the Court to rule and instruct the Jury that there was not sufficient evidence in the cause to authorize the Jury to find the rights claimed by the Plaintiff, and the violation of those rights by the Defendants such as to sustain the Plaintiff's action. The Plain-

tiff on his part did request the Court to rule and instruct the jury as follows:

1st. That there is evidence in the case competent to go to the Jury and to be judged and weighed by them, that at the time of the grants by the town to Gridley & Baxter of their estates or possessions, there existed a town or public way between those possessions, for access to and from the sea in boats and vessels, upon which those possessions were bounded, and that the right to use and enjoy said way passed to said grantees by the grant of those possessions, and is an appurtenance thereto and to their heirs and assigns.

2d. That if said way so bounded on said possessions existed at the time of the grant of those possessions, and the title to the land thereunder to high water was in the town, but not the title to the flats between said way at high water mark, and the sea or low water mark, and if said title rested in the town subsequently by the ordinance of 1641, then by and after the said ordinance, said way became shaped and restricted over the flats to the interval between the flats annexed by said ordinance to the possessions of said Gridley and Baxter, and was and continued to be an appurtenance to the possessions so granted to Gridley and Baxter, their heirs and assigns.

3d. That there is evidence competent to go to the jury, and be judged and weighed by them, that at the time of the grants of liberty to wharf to Gridley, Gill, and Bull, there existed a public or town way between the possessions of Gridley and Baxter, and bounding thereon for access of boats and vessels to the sea or low water, and that such liberties to wharf were bounded by said way, and thereby the right to use said way for access of boats and vessels to and from such wharves, one or both of them, became by virtue of said respective grants, annexed or appurtenant to said grants and to said possessions of Gridley and Baxter, their heirs or assigns.

4th. That if the jury shall find that at the time of, by the staking out of said highway October 31st, 1683, the same extended below high water mark, and that the possessions of said Baxter bounded on said way, then by virtue of the liberty to wharf, granted at the same time to the proprietors of lands on Sea street, the right to use said way for access by boats and vessels to and from such wharf, became by virtue thereof annexed or appurtenant to the possession of said Baxter, his heirs and assigns.

5th. That there is evidence competent and proper to be submitted to the jury, to be judged and weighed by them, that a town way or highway was laid out by the Selectmen, October 31st, 1683, to the sea or low water mark; that the estates or wharves claimed by the plaintiff were bounded thereon; that said way was a way for boats and vessels, and that at the time of the acts complained of, plaintiff was the owner and possessed of said wharves, as stated in the declaration, and if the jury shall so find, and that defendants

while said way remained, and without a previous due and legal discontinuance thereof, erected the structure alleged in the declaration, and continued the same for the time and in the manner set forth therein, and that by reason thereof the plaintiff has been deprived of the use of said way for access to and from his wharves, with boats and vessels, then the plaintiff is entitled to recover.

6th. That if the jury shall find that by reason of the acts of defendants complained of in the declaration, that part of plaintiff's wharf below low water mark, held by him under a grant of the Legislature, has been injured in the manner set forth in the declaration, then the plaintiff is entitled to recover.

Thereupon his Honor, the Judge, did decline and refuse to make and give either of the said rulings and directions so prayed by the plaintiff, but did rule and instruct the jury as prayed by the defendants as aforesaid.

Whereupon the counsel for the plaintiff did then and there except to each of the aforesaid rulings and refusals and to said directions of the Honorable Court, and thereupon the jury returned a verdict for the defendant in the words following, to wit:—

The jury find that the defendants are not guilty in manner and form as the plaintiff in his declaration has alleged.

Foreman.

And inasmuch as the matters referred to, and the several instructions and refusals of the Honorable Court, so objected to, do not appear by the record of the verdict aforesaid, the counsel for the plaintiff prayed the Honorable Court to set their seal to this bill of exceptions containing the several matters proved and given in evidence, and the rejections, rulings, and directions of his Honor the Judge thereupon, and the exceptions thereto; all which being found to be true and allowed:

In witness whereof I have hereto set my hand and seal.

JOHN PITMAN, [L. S.]

District Judge United States for Rhode Island District.

Writ of Error.

THO'S RICHARDSON }
vs. }
CITY OF BOSTON. }

UNITED STATES OF AMERICA, ss:

[L. S.] The President of the United States to the Judges of the Circuit Court of the United States holden in and for the Rhode Island District, greeting:—

Because that in the record and process, and also in the recording of judgment in a suit before you, or some of you, between Thomas

Richardson, of Providence, in the State of Rhode Island, a citizen of the State of Rhode Island, plaintiff, and the City of Boston, a corporation established by law in the District of Massachusetts, defendant in a plea of trespass on the case, a manifest error has intervened to the great damage of the said plaintiff, as has in his complaint been stated:

And it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the Associate Justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Roger B. Taney, our Chief Justice of the said Supreme Court, this first day of October, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth.

HENRY PITMAN,
Clk Cir. Court U. S. for Rhode Island Dist.

October 1st, 1855. Allowed, bond having been filed.

JOHN PITMAN,
District Judge U. S. Rhode Island Dist.

Citation on Writ of Error.

THO'S RICHARDSON
vs.
CITY OF BOSTON.
} Issued Octo. 1st, 1855.

RHODE ISLAND DISTRICT, ss:

[L. S.] The President of the United States of America to the Marshal of said District, or to his deputy, greeting:—

You are hereby required to make known to the City of Boston, a corporation established by law in the District of Massachusetts, that in a certain action of trespass on the case, wherein the said Thomas Richardson was plaintiff, and the said City of Boston was defendant, wherein judgment was rendered against said plaintiff, in the Circuit Court of the United States for the First Circuit holden at Newport, within and for said Rhode Island District, at the June term thereof, A. D. 1855, to wit, on the 25th day of September, being the twelfth day of the term, the said plaintiff has this day sued out a writ of error unto the Supreme Court of the United States,

next to be holden at Washington within and for said United States, on the first Monday of December next, A. D. 1855; and has also given bond with good and sufficient surety in a sum by me deemed sufficient, to prosecute said writ of error with effect, and to answer all damages and costs:

And that the said city of Boston is therefore cited and admonished to appear at said Supreme Court to show cause, if any there be, why the judgment rendered against said Thomas Richardson, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the seal of said Circuit Court and my hand this first day of October, A. D. one thousand eight hundred and fifty-five.

HENRY PITMAN,
Cl'k Cir. Court U. S. R. I. District.

The City of Boston, the within named defendant in error, by Peleg W. Chandler, Esq'r, its attorney and counsel, do admit that due and sufficient service of this citation has been made upon said city.

P. W. CHANDLER,
Att'y.

Oct. 1, 1855.

UNITED STATES OF AMERICA,
Rhode Island District, ss:

CLERK'S OFFICE, CIRCUIT COURT AT PROVIDENCE, October 17th, 1855.

I, Henry Pitman, Clerk of the Circuit Court of the United States for the first Circuit within and for the District of Rhode Island, in pursuance of the command contained in the within writ of error, do make return thereof, and annex hereto, and transmit herewith a true copy of the entire record, and of all proceedings in the cause or suit of Thomas Richardson, plaintiff, against the City of Boston, defendant, wherein judgment was rendered in said Circuit Court of the United States.

I also annex the citation served by acknowledgement of the defendant upon the issuing of said writ of error, a copy of which writ was lodged in this office on the first day of October, A. D. 1855, by the plaintiff in error for the adverse party.

In testimony whereof I have hereunto set the seal of said Court and my hand this seventeenth day of October, A. D. 1855.

[L. S.] HENRY PITMAN,
Cl'k Cir. Court U. S. R. I. District.